



Actors and Audience

in the Roman Courtroom

Leanne Bablitz

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ACTORS AND AUDIENCE IN THE ROMAN COURTROOM

While the death of Cicero marks the end of an era within the Roman courtroom, the evolution of the state into a Principate brought transformation to the Courts rather than decay. The Roman courtroom, like the theater or arena, brought together individuals from every social group of the population. While gathered together within the same space, these individuals participated in diverse manners. Advocates tried to convince the judges and the audience of their cases, litigants looked dejected and clung to family members, and audiences cheered, jeered, and hissed through it all.

In this innovative book, using evidence from archaeology, epigraphy, and Latin literature, Leanne Bablitz presents detailed reconstructions of the Roman courtroom and its participants, and also offers insight into many of the more practical aspects of the daily functioning of the Roman legal system. Much as with the Roman arena and theater, we find in the Roman courtroom an opportunity to study the symbiotic interaction between people of diverse social standing, and the manifestation and reinforcement of several cultural practices such as the patron/client relationship.

Through such examination emerges a new appreciation of the practice and atmosphere of the courtrooms found in early imperial Rome.

Leanne Bablitz is Assistant Professor at the University of British Columbia in Vancouver, Canada, where she teaches Imperial Roman History and Roman Law.

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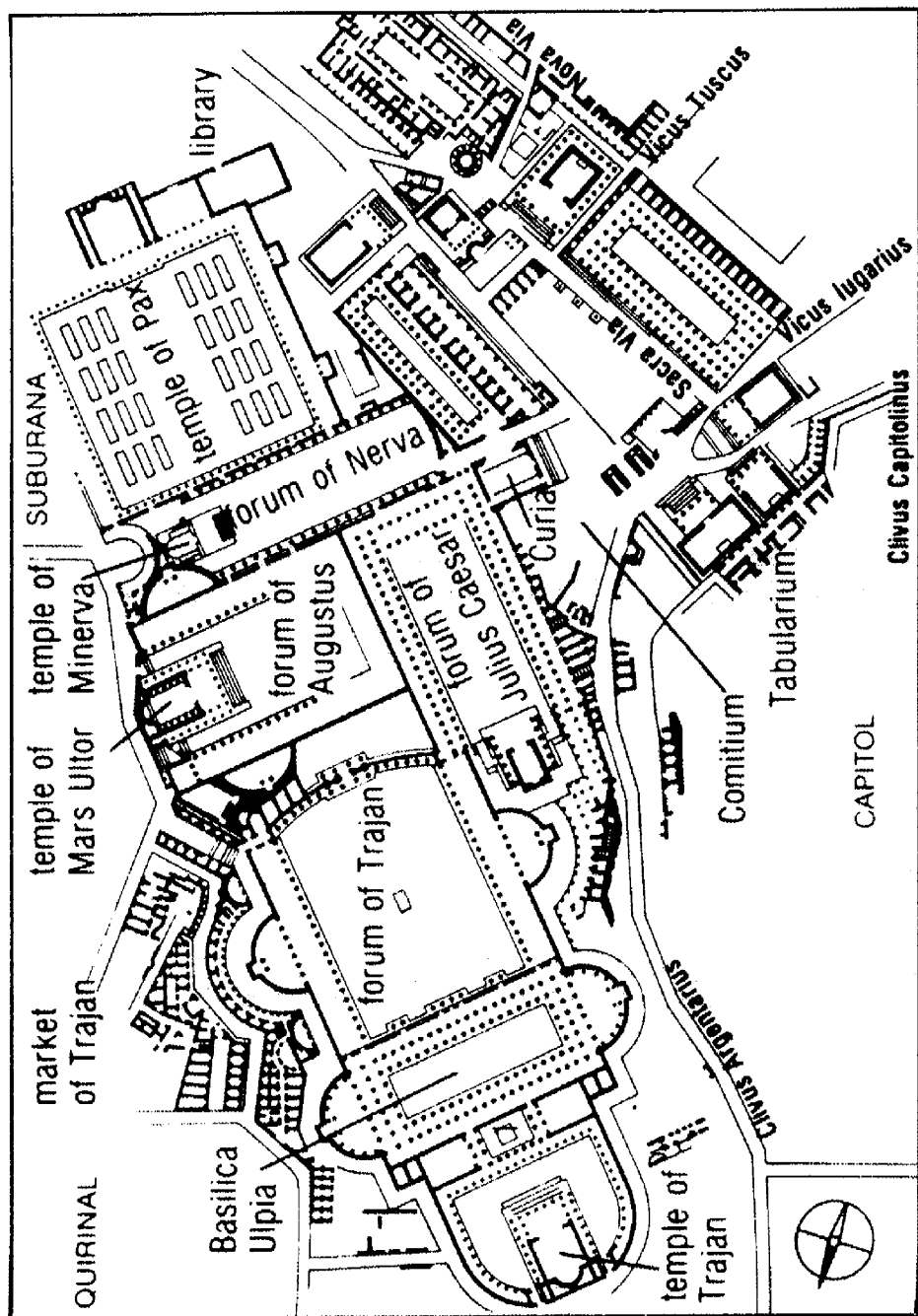
Lastly, this book is dedicated to my parents Arno and Eileen Bablitz. They have put as much effort (of a different sort) into this endeavour as I, and so I offer it to them as a humble token of gratitude for their boundless support and love.

Leanne Bablitz
Vancouver
October 2006

ABBREVIATIONS

Abbreviations for ancient authors and their works follow those found in the *Oxford Classical Dictionary* or the *Oxford Latin Dictionary*.

- AE* *L'Année Epigraphique*
ANRW *Aufstieg und Niedergang der römischen Welt*, H. Temporini and W. Haase (eds.), (Berlin and New York, 1972–)
CIL *Corpus Inscriptionum Latinarum*, T. Mommsen *et al.* (eds), (Berlin, 1863–)
FIRA *Fontes Iuris Romani Antejustiniani*, S. Riccobono *et al.* (eds), 2nd edn, (Florence, 1940–1943)
IG *Inscriptiones Graecae*, A. Kirchhoff *et al.* (eds), (Berlin, 1875–)
ILS *Inscriptiones Latinae Selectae*, H. Dessau (ed.), (Berlin, 1892–1916)
LTUR *Lexicon Topographicum Urbis Romae*, E. Steinby (ed.), (Rome, 1993–2000)
OGIS *Orientis Graecae Inscriptiones Selectae*, W. Dittenberger (ed.), (Leipzig, 1903–1905)
*PIR*² *Prosopographia Imperii Romani saec. I. II. III*, E. Groag *et al.*, 2nd edn, (Berlin and Leipzig, 1933–) (supersedes first edition by E. Klebs, H. Dessau and P. de Rohden, 3 vols, Berlin, 1897–1898)
RE *Real Encyclopädie der classischen Altertumswissenschaft*, Pauly-Wissowa-Kroll
RG *Res Gestae Divi Augusti*
TH *Tabulae Herculenses*
TPSulp *Tabulae Sulpiciorum*. G. Camodeca. *L'Archivio puteolano dei Sulpicii* (Naples, 1992)



INTRODUCTION

In 1999, under the editorship of Bettina Bergmann and Christine Kondoleon, a collection of articles was published as *The Art of Ancient Spectacle*.¹ Within its pages unfolds stimulating discussion of such topics as vase painting, architecture, the Roman triumph, and the Roman funeral, to name only a few. The Roman courtroom, while absent from this collection, warrants inclusion as well. There, too, was a public gathering containing strong elements of performance and spectacle, interwoven with the less ostentatious dispensation of justice. The Roman courtroom was one of a relatively small number of public “stages” where Romans of the elite class or those wishing to attain some measure of fame could promote and advertise themselves.²

Examination of the courtroom, however, sheds light on a broader section of Roman society than just the aristocracy and those seeking public office. Juvenal tells his audience that if they wish to know the truth of mankind’s morals, the place to go is the court of the *praefectus urbi*, where all that is rarely seen lies exposed to view.³ The courtroom of Rome provides a window through which social historians can better understand people of diverse social status and their interactions.

The main aim of my study is to investigate the physical environment of and participants in the courtrooms of Rome between approximately 31 BC and AD 166. A conscious barrier has been constructed by choosing the year of Octavian’s defeat of Antony as the *terminus post quem*, which thereby excludes Ciceronian period evidence. Typically, scholars who study issues connected with the courts, including such topics as rhetoric and gestures, appear comfortable with drawing inferences about first- or second-century AD Rome using evidence found in Cicero’s speeches. While the richness of Cicero’s writings makes this tendency understandable, to assume that such sources reflect the reality of the imperial period brings risks. Thus, my focus is squarely upon imperial era sources. My end date coincides with the death of Cornelius Fronto, whose letters provide a mid-century supplement to and comparison with those of his fellow advocate, Pliny the Younger.

This study also focuses solely on the courts located within the city of Rome; thus, only evidence that places an event, person, or court specifically

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within Rome is considered. Beyond Rome, in both Italy and the provinces, local customs no doubt influenced the nature of the courtroom. To construct a picture of the specifically Roman courtroom, the focus must be limited in this way.

Study of the Roman courtroom, and of the interaction between the participants within it, first necessitates examination of the physical environment. We cannot determine the impact of the courts on the public spaces of Rome and its inhabitants if we have no sense of the visibility and ubiquity of the courts within the topography of the city. Nor can we assess the importance of a loud voice for an advocate if we have no concept of how far he was from the judge(s) and audience, or how noisy was the environment in which he spoke. And we cannot appreciate how critical it was for a litigant to be present at the hearing of his case if we do not understand the highly visible location he occupied within the courtroom. Thus, the first part of this study attempts to set the scene in which our actors – the litigant, judge, audience, and advocate – performed.

In reconstructing the environment of the courtroom, I have cast my net wide to capture any evidence that archaeology, inscriptions, and literature can provide. This approach proves especially fruitful for establishing the location and shape of the courtroom as well as the arrangement of those attending. Archaeological studies of the *fora*, along with topographical studies, numismatic evidence of public platforms, and descriptions in literary sources of the courtroom space and activities, combine to yield rewarding results.

Literary sources provide most of our independent information concerning the various participants. The diversity of the sources, in both date and genre, complicates the task of forming a comprehensive picture of these people. At the same time, that very diversity results in a more nuanced picture, since it enables us on far more occasions to weigh against each other the probative value of pieces of evidence, from similar as well as disparate sources. This study further benefits from the fact that many of the literary sources used, excepting Cassius Dio, were written during the period under examination. Hence, these works are useful not only for the valuable facts they contain, but also for the authors' broader understanding as members of the community in which they wrote. Many of the works used for this study were written by men who had stood as advocates in the very courts we are examining. Thus, in discussions of the courtroom they are able to draw on their own personal knowledge and experiences to provide more accurate and (one expects) realistic accounts. Some of the literary sources used for this study warrant brief introduction and special comment.

Seneca the Elder

Born in Spain, Seneca the Elder most likely studied rhetoric in Rome, to which he came some time after 36 BC. He remained there until approximately 8 BC, when he returned to Spain. Following the birth of his three sons,

Annaeus Novatus, Seneca the Younger, and Annaeus Mela, by AD 5 he had returned to Rome, where he was still known to have been in 33. Soon after Tiberius' demise in 37, Seneca composed the *Controversiae*, in response to his sons' request that he give them his opinion on declaimers who had been his contemporaries and gather together those of their sayings he could still remember.⁴ Of the ten books, five survive almost intact, as well as the prefaces of two others.

Declamation was a method used in schools of rhetoric to teach public speaking, and employed two types of artificially staged speeches: *controversiae* and *suasoriae*. A *controversia* was an exercise in which one argued a hypothetical legal case from each side. A *suasoria* was a deliberative speech that spoke to one side or the other of a situation involving an individual of either historical or mythical origin. Cicero, for example, deliberates whether to beg Antony's pardon; Agamemnon debates whether to sacrifice Iphigenia.⁵ Declamation was not restricted to students of rhetoric, but also served as a method of practice and display for active advocates. Seneca mentions that Cicero declaimed, and we certainly find within Seneca's collection the names of many advocates active in his day.⁶

Each book of the *Controversiae* of Seneca the Elder contains a preface followed by six to nine hypothetical cases. Each *controversia* in turn consists of the same order of elements. First, Seneca states the law central to the case, followed by a brief description of the case's theme. Next, he records portions of various speakers' speeches (first those for one side, then those for the other) when they spoke on this *controversia*. Seneca's primary purpose is to document particularly clever statements, especially epigrams, in which his sons were particularly interested. Following this section, Seneca provides each declaimer's "divisions", the statements that set out the main points on which the speech would be built. Seneca often writes this section in his own person, reporting who took up which angle, who concurred, and who took a different approach. In the final section he lays out a selection of the declaimers' various *colores*, their "colours" or lines of argument for the case.

Seneca's direct comments about advocates' workloads, real cases, judges, the audience, even descriptions of the courtroom environment, as well as his record of statements that advocates made either in court or to other advocates, provide invaluable information.⁷ The other portions of the *Controversiae*, especially the laws and themes, are of lesser value to this study, though certainly Bonner and Crook are correct to argue for their origins in reality and general usefulness to historians.⁸

Quintilian

The *Institutio Oratoria*, composed by Quintilian and published before the summer of AD 95, presents a manual for training the perfect orator, beginning with the prescribed curriculum to be covered in his education, followed by

discussion of the various parts of a speech, and closing with extensive discussion of the more practical side of oratory, including such matters as how to utilize gestures within a speech and how to move the emotions of the judge and audience.⁹ This work constitutes an entirely different and unique genre from other literary sources.

Quintilian was amply qualified to author such a handbook. His father was trained, and apparently quite skilled, in rhetoric; no doubt he directed Quintilian's early education. When Quintilian arrived in Rome is unknown, but he came into contact and perhaps trained with Domitius Afer in the latter's declining years, a man whom Tacitus describes as an advocate of great talents.¹⁰ At some point during his early reign Vespasian created a chair in Latin rhetoric, with a salary supplied by the *fiscus*, which Quintilian likely occupied.¹¹ Pliny the Younger and the grand-nephews and heirs of Domitian were among his students.¹² He continued in this post for the next twenty years, during which time he also remained active in the courts.¹³

We know of three specific cases Quintilian undertook during his career. Queen Berenice, daughter of Agrippa I of Judaea, employed his forensic services in a case concerning an unknown matter. Most likely this hearing took place when Berenice was in Rome; her visit has been tentatively placed between 75 and 79.¹⁴ Quintilian represented Naevius of Arpinum, accused of murdering his wife. The date of the trial is unknown, but Quintilian tells us that his speech was published, which suggests he was successful in defending his client.¹⁵ He also undertook a case concerning the forging of a will.¹⁶ In this case his client was a woman and he secured her acquittal; again, no date can be assigned. It is clear from these few cases that Quintilian maintained an active forensic career during the same years that he taught. Persons of such importance as Queen Berenice, or those fighting accusations of murder and forgery, certainly would not have engaged a rhetorician whose skills were rusty from infrequent use.

Quintilian often refers in the *Institutio Oratoria* to how he and other advocates presented their cases within the courts, how they varied in style or practice, what worked, and what did not. For example, he tells the story of an advocate who wanted an image of the litigant's husband displayed at a certain point during his speech. Unfortunately, those to whom he entrusted the task did not know when to display the image and so the effect was ruined and actually detracted from the advocate's speech.¹⁷ On another occasion, Quintilian stresses how much an advocate must internalize the emotions he is trying to portray, recounting how he managed to turn himself pale and bring tears to his eyes during a speech.¹⁸ Additional practical advice, such as providing various tricks for maintaining the attention of the audience and the judge(s) even through long speeches, also permeates the work.¹⁹ The combination in the *Institutio Oratoria* of theoretical discussion of rhetoric, practical advice on how to argue a case, and examples drawn from Quintilian's own experiences as an advocate makes this work of particular value for reconstructing the Roman courtroom.²⁰

Tacitus

Three works of Tacitus, the *Dialogus*, *Historiae*, and *Annales*, have proved particularly useful. The *Dialogus*, the third of his minor works, records a discussion concerning the changing face of oratory; the interlocutors are two leading advocates of the day, Marcus Aper and Julius Secundus, as well as Curiatius Maternus, also an active advocate, and Vipstanus Messalla, the half-brother of Aquilius Regulus (the rogue advocate often mentioned by Pliny the Younger).²¹ Tacitus, at the time a young man training for the bar (the discussion likely took place between AD 73 and 75), states in his setting of the scene that he was currently spending time with Aper and Secundus, listening to them in both the courts and their private conversations.²² Success in advocacy came quickly for Tacitus. Pliny, at most ten years his junior, states that he was still a young man when Tacitus was already earning “fame and glory” in the courts.²³ In 99 he joined Pliny in the prosecution of Marius Priscus, the ex-governor of Africa, for *repetundae*, the maladministration of his province. The fact that these types of cases carried heavy penalties with them, and that the senate chose Tacitus and Pliny to represent the provincials, suggests that his oratorical success continued during the intervening decades.²⁴ While we are accustomed to thinking of Pliny as an advocate, and Pliny perhaps downplays Tacitus’ involvement in the Priscus case, we must not be blinded by the brilliance of the *Annales* to the fact that Tacitus equalled, if not surpassed, Pliny in forensic skill and frequency of participation in the courts. The deftness with which Tacitus controls the presentation of information to the reader of the *Annales* is surely a mark of a skilled litigator.

While in the *Historiae* and *Annales* Tacitus mentions surprisingly few cases that took place outside of the emperor’s or senate’s court, these works are critical to the examination of men Tacitus identifies as *delatores*, men who increased their wealth by attacking others through real or trumped-up charges. Of course, Tacitus’ agenda, most clearly displayed in the *Annales*, further complicates matters as discussion of possible legal action is presented in a mixture of politics and legalities. A separate study of Tacitus’ methods of recounting cases would be welcome.

Horace, Martial, and Juvenal

The satirical writings of Horace (published between 35 and approximately 15 BC), Martial (published between approximately AD 86 and 105) and Juvenal (published in the 120s or 130s) are of a genre far different from the works of Tacitus, Seneca the Elder, and Quintilian and present the courts from yet another perspective, one that frequently includes exasperation and frustration – with the legal system, advocacy as a profession, or advocates who prey on victims of crime. We hear of judges who take bribes, defendants who deny taking a loan, courts that move so slowly that it takes ages for a case to come

up, or that favor litigants of certain social standing.²⁵ On more practical matters, the satires include such information as the hours of the day during which the courts were open, which months of the year the courts met, and how loud audiences became during hearings.²⁶ Perhaps even more importantly, these works provide a glimpse of non-aristocratic advocates in contrast to the focus of the majority of extant literary sources – advocates who made a living hanging around the courts hoping to pick up clients, or who had trouble making ends meet and had to supplement their earnings with other jobs.²⁷

There is some concern among scholars as to whether satirical writings are viable as sources for historical studies such as this. Indeed, care must be taken, but this does not mean that the only available option is to discard the whole genre as exaggerated beyond worth. Satire finds its strength, and its bite, in real situations, beliefs, and stereotypes. Certainly, satirists throw reality into high relief but, as Braund suggests, satire must answer, at its root, to the desires and anxieties of the audience;²⁸ it must be grounded in reality to be believable, humorous, and mordant. The problem, then, is determining at what point the contents of a satire move from a real situation to fanciful hyperbole. To a certain extent, each statement of a satire must be weighed individually to determine its usefulness to historians. Overall, though, it is possible to categorize the information in gradations of realism. The following are samples of each gradation, as a limited demonstration of how information found within the satirists has been used for this study.

Information that can be most trusted as accurately reflecting the reality of imperial Rome is found in what is peripheral to the point of the satire. Horace, in describing his undesired run-in with a man on the Via Sacra who was expected in court, gives the hour of his walk.²⁹ Incidental to describing the men women love, Juvenal mentions that in winter the theaters are closed and only the courts are still meeting.³⁰ Both authors also provide, through the mere use of adjectives, evidence for the noisiness of the courtroom.³¹

Then there is information central to the satire, but for which truthfulness is a necessity in order to set up the humorous point. Juvenal in one passage compares the volume of people's spoken prayers to the volume of the applause provided by an advocate's hired *claque*.³² The comparison loses all value if advocates did not hire people to provide applause. Juvenal's attack against the advocate who argues dressed in chiffon during July must also contain some truth.³³ If no such person were ever to be found in the courts, such a diatribe would hardly entertain.

The accuracy of personal names found in the writings of the satirists is much debated.³⁴ I have not attempted to match individuals specifically named within the satires with information found elsewhere. Some well-known advocates do appear by name, and that information has been used as evidence of the type of fame and celebrity that an advocate could acquire in Rome. Quintilian, Regulus, and Pliny all receive mention – unsurprisingly positive.³⁵ In other instances, where a name may or may not be historical,

valuable information about advocates and the courts as a whole may still be gleaned from the satires.

Finally, in some passages it seems impossible that a particular piece of information could be accurate and instead must be an exaggeration. It is tempting, since the information falls beyond what we deem likely, to conclude that it is fictional. Yet dealing with a different culture and lifestyle necessitates that we draw conclusions only when possessing clear evidence. Unfortunately, with the satires such conclusive proof is often lacking. Martial's epigram in which he talks of bringing a case involving nanny-goats is suspect.³⁶ Martial went to court over nanny-goats? Surely not. However, cases over minor matters are not unrealistic, as small claims courts of our own day confirm. The best solid information we can draw from this epigram is that Roman courts sometimes dealt with petty issues and advocates could, unsurprisingly, wax eloquent in trivial cases as well as great. In his thirteenth satire, Juvenal mentions that the *praefectus urbi* heard cases "*a lucifero donec lux occidat*" – from dawn until dusk.³⁷ We use this same saying today. Often, however, we do not mean it literally, but instead are implying that the event went on for a very long time. It is possible Juvenal uses the phrase in the same way. At the same time, as Talbert's research on the duration of the senate's session reveals, Roman officials were known to work very long hours on occasion, so long, in fact, that at some points of the year dawn to dusk would have been an apt description.³⁸ Again, we must resist hasty conclusions simply because the information is found within satire.

By way of summation and illustration let us consider one of Martial's longer epigrams. While it does not have a hostile or critical slant (thereby making interpretation even more difficult), it contains several gradations of realism.

*Octobres age sentiat Kalendas
facundi pia Roma Restituti:
Linguis omnibus et favete votis;
natalem colimus, tacete lites.
absit cereus aridi clientis, 5
et vani triplices brevesque mappae
expectent gelidi iocos Decembris.
certent muneribus beatiores:
Agrippae tumidus negotiator
Cadmi municipes ferat lacernas; 10
pugnorum reus ebriaque noctis
cenatoria mittat advocato;
infamata virum puella vicit,
veros sardonychas, sed ipsa tradat;
mirator veterum senex avorum 15
donet Phidiaci toreuma caeli;*

*venator leporem, colonus haedum,
 piscator ferat aequorum rapinas.
 si mittit sua quisque, quid poetam
 missurum tibi, Restitute, credis?* 20

Come, let dutiful Rome acknowledge the first of October of eloquent Restitutus: honor [the occasion] with all your tongues and vows; we are honoring a birthday, let the lawsuits be silent. Let the wax taper of the shrivelled client be absent, and the empty three-leaved tablets and small napkins wait for the jesting of frosty December. Let the richer people compete with their gifts. Let Agrippa's pompous businessman bring cloaks, fellow townspeople of Cadmus. Let the defendant charged with brawling and a drunken night send dinner suits for his advocate. Has a defamed young woman won her case against her husband? Let her hand over genuine sardonyxes, but in person. Let the old admirer of our ancient ancestors give embossed work of Phidias' chisel. Let the hunter bring a hare, the farmer a kid, the fisherman the plunder of the seas. If each one sends their appropriate gift, what do you think a poet will send you, Restitutus?³⁹

October the first appears to have been the birthday of Restitutus. He can be matched with an advocate of Martial's day, the able Claudius Restitutus mentioned in Pliny's letter.⁴⁰ The tone of this epigram suggests that Martial has a connection to Restitutus. While difficult to prove, it is possible that Martial, like the others mentioned in the epigram, had benefited from Restitutus' forensic abilities. Even though in lines 9 through 16 it is unlikely that Martial had specific clients of Restitutus in mind, the section tells us a great deal about Restitutus' practice. First, Martial assumes Restitutus represented women on occasion. Second, Martial suggests Restitutus had a diverse case-load, including assault and adultery. It is tempting to group lines 17 and 18 with the eight preceding lines and conclude that Restitutus' clients varied greatly in status, from those offering sardonyxes to a farmer paying in kind. However, these lines most likely are hyperbolic; the satirist, after listing the realistic, takes the description beyond reality and includes examples that say to the reader indirectly, "Let each person bring whatever is suitable to his or her own position and station," thus providing a slight laugh for the reader. If taken this way, Martial is not suggesting that Restitutus has farmers as clients. Such an interpretation aids nicely in understanding the final two lines, as we already know what sort of present a satirist should give – the epigram itself. Thus, the final two lines bring the reader back to reality.

These authors' works, although not the only ones of value for this study, constitute the main corpus of sources and reveal the inevitable complications. Pliny the Younger has not been included in this source group because I have used his letters only as they serve broadly to elucidate the Roman courtroom and its participants, not as a case study of one advocate within Rome. Pliny's role as an advocate warrants detailed examination, and his collection of letters guarantees promising results. However, to give proper attention to Pliny the advocate as a case study requires a level of specificity beyond the scope of this book.

Even this brief discussion of the literary sources indicates why the advocate receives two chapters; we must follow where the evidence leads. Information concerning the audience, the litigant, and to a certain degree the judge must be gleaned from sources in which they are peripheral. No ancient texts take as their focus any of these participants; rather, the advocate is often the focus and the other participants are discussed in terms of their importance to or interaction with him.⁴¹

Some general cautionary remarks are thus warranted concerning the sources available to us. By its nature, historical writing records much more about sensational cases than about those that filled the bulk of the courts' calendar. Pliny's letters require particular care since he focuses on his successes rather than his failures, his special occasions rather than his daily work. Furthermore, here was a man of the highest social and political echelon recording cases in which he participated or had a vested interest. The typical case is not to be found within his letters.

Also, it must be remembered that much litigation was repetitive with respect to both the nature of the dispute and the involvement of the advocates and others. While such cases gave the advocate room to use the full range of his training, they did not stand out as unique or unusual and thus hardly warranted mention by the likes of Quintilian or Pliny. However, although extant sources are dominated by the specific cases of only the rich and famous, those caught up in trials for murder and suing for their inheritance, this does not mean that the courts were a predominantly upper-class phenomenon. Our sources, by their very nature, do not provide a representative view of all litigation in Rome; they ignore the mass of litigation, the mundane cases of daily life, and focus to a great extent on what was unique and sensational.

* * *

While this study acknowledges the differences to be found between the individual courts of Rome (private, public, imperial, senatorial), there is value in taking a broader approach that examines what participants faced generally in a courtroom rather than looking specifically at each court. Such specificity is, in fact, unattainable in some instances since for many courts we know nothing more detailed than that they existed. Furthermore, statements are often

made, particularly in Quintilian's writing, but also in Tacitus' *Dialogus* and Pliny's letters, that do not distinguish between specific courts but rather suggest that many aspects of the courtroom were the same in diverse courts.

I have exercised caution in this regard, and assume that when Roman authors of the first century AD discussed "the courts" they did not include the senate. I thus have not included detailed consideration of the senatorial court. The senatorial court environment was unique in many ways: the audience was less socially diverse and of a far different educational level from those who attended public trials; political and power strategies permeated every element to the point that it is often difficult to ascertain whether an event was a legal hearing *per se* or a political debate. This latter difficulty is especially apparent when one attempts to identify cases recorded in Tacitus' *Annales*. The multifaceted nature of the senate's judicial activities, the interweaving of political arena, legal court, and imperial advisory committee, is most interesting and certainly warrants a separate study.⁴²

A few remarks on terminology are also in order. This study considers participants in all courts found within Rome, both those that dealt with private (civil) disputes and those that handled public (criminal) wrongdoings. While many of Rome's courts dealt with only one or the other type, several courts (for example, the praetors and the emperor) could address either. The nature of the evidence for this study renders it neither practical nor helpful to divide the discussion along the lines of private and public jurisdictions. To discuss these courts together, however, requires careful use of terms as well as some adaptation, since modern legal terminology assigns specific terms to the participants. The term "litigant", which in modern law tends to refer to the parties to a private dispute, is used more broadly to refer to all people entering into litigation, be they the plaintiff or defendant in a private dispute or the accuser or defendant in a public trial. To describe this litigant the pronoun "he" will be used for convenience, even though (as will be discussed in Chapter Three) it is certain that women were actively involved in the courts as litigants. "Judge" is used to refer to anyone approached by two litigants to provide a legal ruling. Thus, broadly speaking, all magistrates who exercise jurisdiction, the emperor, as well as the single judge (*unus index*) fall within this category. Where more specificity is possible, the particular terms will be used. Those individuals who served on the panels in the *quaestiones perpetuae*, whom modern scholars often call "jurors", will be referred to as "judges", following the ancient authors' terminology. The reason for this deviation from the common practice is that those who were eligible for service on a panel could also be called upon to serve as single judges. Regarding the *unus index*, I make no differentiation between the *unus index* and the *arbiter*. It has been suggested that the two terms reflect an early republican differentiation that by the late Republic had become very slight. The ways in which the ancient sources of the late republican and the early imperial period use these two terms sometimes

suggest they are interchangeable, while at other times they do not, an issue that cannot be addressed in this study.⁴³

For the legal event when a judge hears the evidence provided by the litigants and renders an opinion, many terms exist but most carry with them a modern connection to either public or private law. The word “trial” is strongly linked with public courts, just as “dispute” or “suit” is with private courts. Some adaptation has therefore been necessary. Where the discussion deals with a clearly public or private event, the standard term is used. When events that are both private and public are discussed together, or which for lack of evidence cannot be determined to be private or public, the advocates’ vocabulary is adopted – the advocate undertook “cases” that could be private or public, and so that term will be used.

* * *

This reconstruction of the Roman courtroom fills a surprising gap within the modern scholarship. Modern historians certainly acknowledge the importance of the courts, and their role in politics and society as a whole. The jurisdictions and procedures of specific Roman courts and magistrates, the transference of cases from local jurisdictions within Italy and beyond to Rome, and social aspects of the courts concerning status, access to the courts, and statistics of Roman cases have garnered much attention.⁴⁴ At the same time, scholars examining topographical subjects ranging from the imperial *fora* to the location of the praetor’s tribunal have also drawn interesting conclusions of great benefit to this study.⁴⁵ Overall, many scholars have considered issues of relevance to courtroom participants, but have not applied their findings. For example, the interaction of individual identity, public display or performance, and physical space has attracted much interest in recent years.⁴⁶ In addition, some studies have focused more narrowly on aspects of the courtroom participants: the advocate as *delator*, or the identification of equestrians as judges.⁴⁷ Many of these findings clearly invite further application to the courtroom, but to date such steps have not been taken.

This study adopts a more holistic approach to the Roman courtroom than has been previously undertaken; indeed, it is the first attempt to consider the courtroom of imperial Rome as a whole. The book opens with an examination of the physical setting of Rome’s courtrooms. This is followed by a reconstruction of the physical arrangement of the participants at a public trial, with specific attention given to the centumviral court’s arrangement within the Basilica Iulia. Next are individual examinations of each of the courtroom participants; within these chapters I consider the identity of group members, their motives for engaging in legal activity, and their participation within the process.

Unlike the modern court system, which is quite remote from most of the populace, the Roman court system involved far more people, particularly in

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the role of judge; many men served as a praetor during their political careers, and a far higher number of men, not only the well-to-do but those of lesser means, served as a single judge or one of a panel of judges.⁴⁸ In the imperial era, we thus discover a city teeming with courts – courts in which litigants sought justice or revenge, boisterous audiences found entertainment and employment, and nervous advocates struggled to win using all the weapons in their arsenal. We find courts in which out-of-town clients felt the full weight of the Roman yoke, weak litigants staggered under the pressure exerted by a powerful and well-connected opponent, and advocates basked in the glorious applause and anticipated imminent political success. Let us turn, then, and first consider the physical placement of Rome's courts.

THE LOCATION OF LEGAL ACTIVITIES IN THE CITY OF ROME

As a large city and the heart of an empire, Rome was full of courts. These had an impact not only on individuals involved in the litigation but also on the physical environment of the city, since much of this activity was located in central public areas. During Rome's normal business days any given number of these courts would be in session, thereby impinging on the daily life of this busy city's inhabitants; the *fora* would be crowded with judges, advocates, and litigants from the city, Italy, or beyond, impeding, if not outright thwarting, movement through the public places of Rome and filling these areas with noise and distractions.

Here was an opportunity, scarcely avoidable, to see the legal system at work. The ideological importance of such visibility should not be underrated. In a society without mass information systems, public displays of diverse types (e.g. entertainments, audiences, processions, artistic decorations) served as direct and indirect methods of communication between state and public, ruler and ruled. Intertwined as they were with public daily life, the courts spoke on many levels. The exposed machinery of The Law could bring comfort to the innocent that wrongs were righted, and fear to the criminal, actual or potential, that retribution would be swift and sure. By linking these ideas with the emperor, the courts served as evidence of the organized functioning of the state under his direction.

This chapter places the Roman courtroom within the known topography of imperial Rome. Those individuals having a jurisdiction, namely various magistrates and the emperor, provide the chapter's basic structure. Available evidence dictates that the emperor and the praetors with the most extensive jurisdictions of all magistrates, the *praetor urbanus* and *praetor peregrinus*, receive much attention. The *quaestiones perpetuae* (the standing courts presided over by the other praetors), the *praefectus urbi*, and the consuls can also be located, although the evidence is far scarcer. I also consider what evidence we have for the courts of other magistrates. Finally, I use a more chronological and spatial method to provide an overview of legal activities within Rome's topography.

The goal of this chapter is to gain insight into the physicality of the Roman courts and understand to what degree the courts were interwoven into

the life of an average Roman. In addition, the discussion encourages an appreciation of the diverse forms legal activities could take. This chapter, then, identifies the stage parameters within which the participants, the subjects of the subsequent chapters, “performed”.

Courts of the praetors

One of the consequences of Augustus’ efforts to bring order and system to the rather unruly government of the Roman world was an inevitable and inexorable increase in bureaucracy. This is manifested in the gradually rising numbers of the praetorship. In 23 BC Augustus optimistically set the number at 10.¹ By the end of his reign and through most of the reign of Tiberius, who was temperamentally opposed to bureaucratic accretions, it was set regularly at a reasonably modest 12, although the number climbed as high as 16.² In subsequent reigns the figure continues to fluctuate, with the average creeping ever upwards. Speaking of Claudius’ reign, Dio reports there were anywhere from 14 to 18.³

The praetors had a primary role at the very centre of the Roman legal system, as they were charged with overseeing the administration of private and public law within the city of Rome. The status of the praetors was hierarchical. At the top stood the *praetor urbanus* and the *praetor peregrinus*, each with his own court.⁴ Below them, the rank and file officials either presided over the various *quaestiones perpetuae* or took on some of the special praetorial tasks that developed as imperial administration became more complex. These tasks included such diverse duties as the direction of the treasury, or the supervision of two new courts, one of which heard disputes concerning *fideicommissa*, the other disputes between private citizens and the *fiscus*.⁵ The drama of Roman legal life, both private and public, was to a large extent played out in the courts of these officials.⁶

Attempts to identify the exact location in Rome of these magistrates’ courts meet with varied success. Some we can place with cautious confidence, while for others we can make only educated suggestions. Let us first look at the sources, beginning with the court for which we have the most evidence: the court of the *praetor urbanus*.

Praetor urbanus in the Forum Romanum

As the venue of the most prominent praetor, the court of the urban praetor unsurprisingly appears in the sources most often of all the courts linked to specific magistrates. The centrality of this court within Rome’s legal system guaranteed it an equally prominent location within the city. Relying chiefly on literary evidence, scholars suggest that for approximately the first three decades of Augustus’ reign, it was likely found at the east end of the *Forum Romanum*.⁷ The location is wrapped within a topographical snarl of controversial locales for

such structures as the *Puteal Libonis*, *Fornix Fabianus*, *Ianus medius*, and *Porticus Iulia*, all of which are tied to the urban praetor's court by a few passages of Horace and Persius and scholiasts' comments on these texts.⁸ The *Puteal Libonis* seems most strongly connected to the court. The best composite description places the court "*ante atria*" near the *Fornix Fabianus*, inside the *Porticus Iulia*.⁹ Fitting these references into the context of the known Forum structures, topographers generally agree to place the court at the east end of the Forum.

How far to the east is disputed. Coarelli defines the location as "entro un ristretto spazio compreso tra il Tempio di Vesta, la *Regia* e l'angolo sud-est della Basilica Emilia", "within a confined space contained between the Temple of Vesta, the *Regia*, and the south-east corner of the Basilica Emilia".¹⁰ David, when he argues for an extra move of the tribunal, seems aware of the problem inherent in Coarelli's placement, in that it situates the court in the exact location of the Temple of *Divus Iulius*. David believes that after the tribunal had been in the area defined by Coarelli, it moved northwards to the *Porticus Iulia*, which he equates with the portico of Gaius and Lucius attached to the south side of the Basilica Aemilia.¹¹ In this way he accounts for the displacement of the tribunal by the construction of the Temple of *Divus Julius* dedicated in 29 BC.¹² Perhaps these two positions can be combined by locating the tribunal always at the north-east corner of the Forum, with the construction of the temple causing the location of the north-east corner to shift somewhat to the west. Richardson adopts a more radical position, suggesting that by its unique design the niche in the speaker's platform of the Temple of *Divus Julius* avoided trespassing on the *Puteal Libonis*, rather than respected the spot of Caesar's pyre.¹³

By placing this court in the eastern *Forum Romanum*, we find a new physical immediacy in Horace's description of his unfortunate meeting with a hanger-on, dated to sometime in the 30s BC:

*ventum erat ad Vestae, quarta iam parte diei
praeterita, et casu tunc respondere vadato
debebat; quod ni fecisset, perdere litem.
'si me amas' inquit 'paulum hic ades.' 'inteream si
aut valeo stare aut novi civilia iura;
et propere quo scis.' 'dubius sum quid faciam' inquit,
'tene relinquam an rem.' 'me, sodes.' 'non faciam' ille,
et praecedere coepit. Ego, ut contendere durum est
cum victore, sequo ...*

*Casu venit obvius illi
adversarius et 'quo tu turpissime?' magna
inclamat voce, et 'licet antestari?' ego vero
oppono auriculam. rapit in ius: clamor utrimque:
undique concursus. sic me servavit Apollo.*

We had come to Vesta's temple, a quarter of the day now having passed, and by chance at that hour he was supposed to appear in court having given a bond, and if he did not appear he would lose his case. "Pray," he says, "do help me here a little." "Confound me if I have the strength either to stand, or know the civil laws – and I hurry to you-know-where." "I wonder," he said, "what I should do, whether to leave my case or you." "Me, please." "No, I won't," he said, and he began to go ahead. I, as it is hard to struggle with the victor, follow ... By chance his adversary came face to face with this fellow. "Where are you going, you scoundrel?" he cries in a loud voice, and, "May I call you as a witness?" I offer my ear. He hastens him away to court. There is shouting from both parties, and confused scuffling. Thus did Apollo save me.¹⁴

Horace's companion likely was involved in a suit before the common private court for Roman citizens – that of the *praetor urbanus* located very much nearby. Earlier in the satire Horace states that he was heading towards Caesar's gardens located on the west bank of the Tiber. We can then reconstruct that Horace's most likely path during this conversation would have taken him and his acquaintance down the Via Sacra, heading westwards. After a brief pause near the Temple of Vesta, Horace no doubt hastened upon his journey towards the west end of the Forum.¹⁵ The fact that Horace and the defendant ran into the plaintiff of the case while walking down the Via Sacra loses much of its fortuitous quality when one realizes that Horace and his companion had likely passed directly by the court itself. We can go so far as to wonder whether Horace's companion perhaps asked for aid when the court came into immediate view.

Praetor urbanus in the Forum of Augustus

The *praetor urbanus*' court did not remain permanently in the *Forum Romanum*. As part of his overall building plan to make Rome the envy of the empire for both beauty and utility, Augustus built another forum to deal with the increase in people and cases at law, and stipulated that public trials be held in this new forum "*separatim*", (separately).¹⁶ Ever practical, Augustus likely insisted that the praetor move with the standing courts when the forum first opened in approximately 2 BC.¹⁷ The removal of this magistrate and all the associated traffic, including the likes of Horace's companion, would have greatly eased the pressure on the *Forum Romanum*.

Epigraphical evidence both confirms this location and suggests a residency of long duration. Two sets of first-century documents, known as the *Tabulae*

Herculanenses and the *Tabulae Sulpiciorum*, give a human dimension to legal activities within the Forum of Augustus.¹⁸ Originating in the region of Pompeii, the now legendary community located two hours south of Rome, nine of these documents place local individuals in Rome within this forum on a specific day and at a specific time for judicial purposes.¹⁹

Before discussing how these documents confirm the location of the praetor's court in this forum, we must first briefly consider the nature of the texts. Seven of the relevant documents are *vadimonia*.²⁰ In its most basic form a *vadimonium* is a promise made by the defendant in a private dispute to appear at a particular place on a specific date for the continuation or hearing of the dispute. The second sentence of such a document normally consists of the promisor agreeing to pay a sum to his opponent if he does not appear.²¹ A *vadimonium* could take various forms, determined by the stage in the dispute, and whether it was voluntarily undertaken by the involved parties, sanctioned by a magistrate, or used to transfer a case to a remote court.²² The *vadimonia* of interest to this study are those which transfer a case from the local court to Rome. Throughout the Roman world the jurisdictions of local courts were limited in a number of ways. Local courts could not hear cases in which the sum at issue was larger than a set amount, nor could they hear cases in which being found liable also incurred *infamia*.²³ As Italy did not have a governor's court to handle these cases – the governor being the normal magistrate to whom such cases would go in the provinces – they were transferred to Rome where they fell within the jurisdiction of either the *praetor urbanus* or the *praetor peregrinus*, depending on the respective parties' status.²⁴ Consider the following *vadimonium* (TH 14), which is typical of the others.

*Vadimonium factum Calatoriae Themidi in iii Non(as)
Decemb(res) prim(as) (vacat)
R[o]mae in foro Augus(to) ante
tribunal praetoris urbani
hora secun[d]a HS M dari
stipulata es[t] ea q[uae] se
Petroniam [Sp. f. Iustam]
esse dicat, s[po]p[on]dit
Calatoria [Them]is t(utore) a(uctore) C
Petronio Tel[e]ph[ro].
V. f. [C. Petronio Telesphoro].*

A *vadimonium* was made against Calatoria Themis for the third of December at Rome in the Forum of Augustus before the tribunal of the *praetor urbanus* at the second hour. The woman who calls herself Petronia Iusta, the daughter of an

unknown man, stipulated for, and Calatoria Themis, on the authority of her tutor C. Petronius Telesphorus, answered for, the payment of 1000 sesterces.²⁵

Calatoria Themis and Petronia Iusta were engaged in a dispute concerning (as we learn from other documents in the collection) the freedom of Petronia Iusta.²⁶ By means of this *vadimonium* these women agreed to meet in Rome on the third of December at the second hour of the day to continue their dispute before the *praetor urbanus*. Failure to appear meant the forfeiture of 1000 sesterces.

TH 14, while typical in its format and general features, is unique in stating that the rendezvous of the parties will be before the tribunal itself of the *praetor urbanus*, rather than at some architectural feature, such as a specific column or statue located within the forum. It can be no clearer that the court of the *praetor urbanus* was located within this forum at the time Petronia Iusta and Calatoria Themis were engaged in litigation. Unfortunately, we cannot learn from the document where within the large forum the court was situated.

The forum's architectural features, however, enable us to place the urban praetor's tribunal with greater specificity.²⁷ If we consider the forum as a whole, the tribunal could occupy one of three types of spaces: the open central area, the porticoes located on the long sides of the central area, or the *exedrae* – the semicircular areas attached to both porticoes. Given the spatial needs of court participants, surely the most practical locations are the two *exedrae*.²⁸ Vitruvius, an architect of the late first century BC, describes *exedrae* as useful areas for discussion for philosophers, teachers of rhetoric, and others.²⁹ This utility is no doubt due to the degree of separation from passers-by that a group could achieve in a deep semicircular space. The porticoes are also a possibility, but undoubtedly a court would have avoided a location where a constant flow of foot traffic was guaranteed by the protection provided from the sun and weather, as people moved in and out of the forum.

Exposure to weather is indeed also a relevant factor. To place the court of a very active magistrate in the central area where it would be fully exposed to the elements, with other more protected spaces nearby, seems impractical. Unlike the *quaestiones*, which likely were called together on an *ad hoc* basis, the jurisdiction of the urban praetor was such that he probably could not hold court often enough to stay abreast of the matters needing his attention. It makes little sense to place his court in a location that could be open to extreme sun, winds, or rain. Even porticoes were not weatherproof; Vitruvius advises that porticoes required double colonnades to keep out rain.³⁰ Those of the Forum of Augustus had only a single colonnade.

Furthermore, it is likely that the court grouping would have taken on a semicircular form (i.e. magistrate at front, litigants and advocates before him,

audience of varying size behind them and around the sides), and this shape favors the *exedrae* (open areas) rather than the porticoes.³¹

While such practical reasoning suggests a home for this court within one of the two *exedrae*, epigraphical evidence supports a position within the western *exedra*. The reading of one of the Herculaneum tablets' opening section has recently been amended, with important results:

*Descriptum e[re]t recognitum ex] | edicto L. Serv[er]ni Gall[i]
pr[ae]toris) quo[d] propo[si]tum erat R[oma]e in f[or]o
Aug[ust]o sub] | portico Iulia a[d] colum[n]am [..ante]
tribunal eius [in quo sc[ri]ptum e[st] rat id] | quod infra
sc[ri]ptum] est: | L. Servenius Gallu[s] pr[ae]tor) dicit:) | M.
Ofillius Macro [et Ti. C]rassius Firm[us] Iiviri] ...*

Copied and checked from the edict of Lucius Servenius Gallus, praetor, which was posted at Rome in the Forum of Augustus under the *Porticus Iulia* on the column ... before his tribunal on which was written that which is written below: Lucius Servenius Gallus, praetor, says: Marcus Ofillius Macro and Tiberius Crassus Firmus *duovirs* ...³²

The remaining contents of the document, while very fragmentary, tell us that the copy was made of the praetor's ruling concerning an application made by a Junian Latin to gain citizenship for his infant daughter. Unfortunately, this document does not make clear whether L. Servenius Gallus was an urban praetor or a peregrine praetor. However, since the issue in this document (the status of one of the petitioners) is very similar to the case involving Calatoria Themis and Petronia before the *praetor urbanus*, it is likely that L. Servenius Gallus was *praetor urbanus*. Utilizing Ovid's detailed description of the statuary in the Forum of Augustus, scholars have located the Julian family statues within the west *exedra* and portico.³³ It thus is no surprise that this portico came to be called the *Porticus Iulia*. Viability of a location in the *exedrae* combined with the evidence drawn from this document permits the placement of the court specifically within the west *exedra*.³⁴

It need not trouble us that this document refers to the *porticus* as being in front of Gallus' tribunal. The excavations of the Forum of Augustus show that the columns of the porticoes extended across the entire length of the *exedrae*. This edict likely was attached to one of these columns, which separated the *porticus* from the *exedra* and made the relationship between the two locations practically indistinguishable.

While *TH* 14 is important for placing the court of the urban praetor in the Forum of Augustus, it is in fact the unique exception rather than the rule with regards to the location chosen for executing the *vadimonium*. In the other

surviving *vadimonia* the locations are physical architectural features of the Forum of Augustus as opposed to the court of the praetor himself, which we find in *TH* 14. The statues of the various divinities associated with Apollo and the Julian family, which along with those of the *summi viri*, Rome's "great men", lined the porticoes and *exedrae* of the forum, are used as rendezvous points, some in combination with a column that presumably was nearby.³⁵ So we find parties meeting "*Romae in foro Aug(usto) ante statuam Cn(aei) Senti Saturnini [t]riumphalem*", "at Rome in the Forum of Augustus before the triumphal statue of Cn. Senti Saturninus"³⁶ and "*R[o]m[ae] in foro Aug[usto] ante sign[um] Dianae Lucifera[e] ad co[lumn]am x*", "at Rome in the Forum of Augustus before the image of Diana Lucifera at the tenth column".³⁷ Two other documents use the altar and Temple of Mars Ultor as the meeting point: "*[Roma]e in [foro] Augusto ante aram [M]artis Ultoris pr[o]xum[e] gradus*", "at Rome in the Forum of Augustus before the altar of Mars Ultor very near the steps"³⁸; "*Rom[a]e in foro Augusto ante ae[d]e Ma[rtis] Ultoris*", "at Rome in the Forum of Augustus before the Temple of Mars Ultor."³⁹ The exactness with which we can place these legal transactions involving named inhabitants of the Roman Empire is noteworthy, as is the fact that all refer to locations that would have the litigants meeting at the very end of the forum where the *exedrae* were located.

With the court of the *praetor urbanus* placed securely within the Forum of Augustus, it remains for us to identify the chronological period of its residency. The *testatio sistendi* contains consular names that date the appearance to 31 January 40. Again, on the basis of consular names, the *vadimonium* mentioned in the *conventio finiendae controversiae* was for appearance in this forum on 1 November 48.⁴⁰ Concerning the *vadimonia*, we are able to date the grouping *TH* 13–15, all of which are connected to the same legal issue, to 74–76.⁴¹ Unfortunately, the poor preservation of the *Sulpicii* collection of *vadimonia* frustrates attempts to assign specific years to any of them; the best estimate is mid-first century.⁴² The various monthly dates span two in March (12 and 17),⁴³ one in September,⁴⁴ two in November,⁴⁵ and one on December 3.⁴⁶ Thus, the court of the *praetor urbanus* can be placed within the Forum of Augustus as early as 40 and as late as 75.

We can perhaps push the *terminus post quem* date for the *praetor urbanus*' occupation back still earlier. As mentioned above, there is a strong possibility (although little direct evidence) that Augustus' planned uses of this forum included this court. Suetonius records one of the reasons for the forum's construction to be the continual increase in the number of legal cases.⁴⁷ Maternus, in Tacitus' *Dialogus*, recalls how in former times the *Forum Romanum* was packed with audiences to hear cases, suggesting that by his own day that was no longer the case.⁴⁸ Augustus' forum likely had fulfilled its function, achieving the goal of removing some of the pressure from the *Forum Romanum*. Scholars naturally wonder about Suetonius' statement that the forum was opened with haste, before the temple was finished.⁴⁹ David

suggests that because of bad overcrowding the forum was consecrated early so that the praetors – whom he believes needed to have their tribunals located within a *templum* – could move there even while the temple was being finished.⁵⁰ Whether the praetors warranted such precipitous action or not, it is plausible that the *praetor urbanus* occupied this forum space shortly after its completion. Be that as it may, the archives from Herculaneum and Puteoli provide incontrovertible evidence for the *praetor urbanus*' residency within the Forum of Augustus during the Julio-Claudian period and beyond.

Praetor peregrinus in the Forum Romanum

Turning to the magistracy of the *praetor peregrinus*, we find that literary sources securely place his court, like that of the *praetor urbanus*, in the *Forum Romanum* during the last two centuries of the Republic.⁵¹ More specifically, some sources place his tribunal “*in medio foro*”, “in the middle of the forum” – though this also does not give us an exact location.⁵² Archaeological findings, however, may enable us to determine the exact placement of the *praetor peregrinus*' court within the central area of the *Forum Romanum*. Identical to that of the *praetor urbanus*, this praetor's court also subsequently moved to the Forum of Augustus in the imperial period.

In the pavement of the *Forum Romanum*, approximately 22 m to the east of the Rostra of Augustus, is an inscription 12.65 m in length: “*L NAEVIVS L F SVRDINVS PR.*”⁵³ Another copy of this inscription, found in the sixteenth century on a nearby slab, continues: “*INTER CIVIS ET PEREGRINOS.*”⁵⁴ When exactly Naevius Surdinus was *praetor peregrinus* is unknown. We know of a Naevius who was *triumvir monetalis* in 15 BC. If this is the same person, he would then have been praetor between approximately 12 and 10 BC.⁵⁵ On the basis of this inscription it is generally held that Naevius undertook the repaving of the entire Forum following the fire of 14 BC. The archaeological record suggests that he also restored the *Lacus Curtius*, installed his tribunal *ex novo* or restored it, and perhaps built the Augustan phase of the rostra.⁵⁶ That the inscription records the repaving of the Forum does not preclude the conclusion that the location of the inscription itself is linked with the physical location his court occupied within the Forum.

While Richardson and others readily accept that Naevius Surdinus placed this inscription near his tribunal, they fail to identify any nearby structures as that tribunal.⁵⁷ As a result, Richardson argues that the tribunals of the praetors were very much temporary structures, and thus left no trace on the Forum floor.⁵⁸ More recent scholarship demands that these conclusions be reconsidered. Based on their archaeological work on the central area of the *Forum Romanum*, Giuliani and Verduchi conclude that the area located approximately 1.5 m to the east of Naevius' inscription and previously identified by Hülsen as the “Aiola di Marsia”, “Grove of Marsyas”, an area occupied by a fig and an olive tree and the statue of Marsyas, was actually a

raised platform of sizeable dimensions in the very early imperial period.⁵⁹ They suggest that this platform should be identified as the tribunal of the *praetor peregrinus*.⁶⁰

Based on their examination of the materials used in its construction, Giuliani and Verduchi conclude that the structure measured 8.9 x 7.9 m² and was of both modest weight and reduced height.⁶¹ As to the structure's date, Giuliani and Verduchi conclude that it is post-republican and pre-Severan. Thus, the only remaining building period to which the structure may belong is the reconstruction undertaken by Naevius Surdinus. Based on their findings, Giuliani and Verduchi envision a square enclosure of small corner pillars connected to external slabs of marble or travertine, the top surface of which was probably accessed by a short set of encased stairs located on the north side. They tie this structure closely to the inscription of Naevius Surdinus, the first letter of which lies exactly parallel to the north boundary line of the structure.⁶²

The *Anaglyphia Traiani* (two marble reliefs depicting activities taking place within the Forum) further support Giuliani and Verduchi's identification of the Aiola as the tribunal of the *praetor peregrinus*.⁶³ The date and subject matter of these two reliefs are in dispute. Presently, scholars date them to either Trajan's or Hadrian's reign. The relief described as an *adlocutio* or *alimenta* scene is of specific interest here because of a raised platform in the centre of the relief, on which stands a woman with two children, before a magistrate seated on a curule chair.⁶⁴ In the scene, to the right (west) of the platform, is the statue of Marsyas and a fig tree. Behind these figures the relief portrays the buildings of the southern façade of the Forum, clearly indicating that the raised platform was located in the central area of the *Forum Romanum*.⁶⁵

Scholars attempting to identify the overall subject of the scene naturally see the platform and its occupants as an important element, and thus assign various meanings to it, depending on what scene they believe the entire relief depicts. However, if we accept Giuliani and Verduchi's belief that this area of the Forum, previously understood to be unpaved and therefore the "aiola", was in fact a tribunal, then surely this raised platform is that tribunal and the Marsyas statue and fig tree were located to the west of the tribunal but very much nearby, as the *Anaglyphia Traiani* suggest.⁶⁶ The comments of third-century scholiasts on Horace's reference to the statue show that it was still historically associated with legal activities, including the hearing of cases and the executing of *vadimonia*.⁶⁷ Thus, the central group portrayed on the *adlocutio* relief are real people on the tribunal of the *praetor peregrinus*, rather than a statuary group as has been suggested by Torelli.⁶⁸

The archaeological work of Giuliani and Verduchi on this area of the Forum, coupled with the ancient literary sources and artistic representations, enable us to conclude with reasonable certainty that Naevius Surdinus placed his inscription in this particular location precisely because it could then commemorate two services he had provided for the state: his repaving of the Forum and his year-long supervision of the legal system as *praetor peregrinus*.

Praetor peregrinus in the Forum of Augustus

The inscription of Naeuius Surdinus clearly places the tribunal of the *praetor peregrinus* in the *Forum Romanum* during the early part of Augustus' reign. Evidence from the *vadimonia* suggests, however, that the *praetor peregrinus* accompanied the *praetor urbanus* to a new location in the Forum of Augustus.⁶⁹ Two of the *vadimonia* tablets use a different legal terminology from the rest, and both concern legal disputes involving the same two people – C. Sulpicius Cinnamus and Trypho Alexandrinus.⁷⁰ These *vadimonia* follow the standard form in that the parties agree to meet in the Forum of Augustus, except that Trypho, rather than promising by means of a *sponsio* to pay a fee if he fails to appear (which the parties in all the other *vadimonia* do) promises in a *fideipromissio*. His failure to use the *sponsio*, a form that was available *only* to Roman citizens, indicates that he was not a citizen, a fact that his name alone suggests. In turn, this means that the dispute *could not* be heard by the urban praetor (who dealt only with issues between Roman citizens) but rather would be heard by the *praetor peregrinus*.⁷¹

No other direct evidence confirms the residency of the *praetor peregrinus* in the Forum of Augustus. However, with the *praetor urbanus* firmly established within this forum, the paucity of evidence is less distressing. It would have been practical for the two main praetors overseeing Rome's legal system to be in close proximity.

Since we have placed the court of the *praetor urbanus* in the west *exedra*, the logical location for the *praetor peregrinus* would be the east *exedra*. The two magistrates then balance in both function and location.⁷² This arrangement would also fit excellently with the political ideology of the forum. Augustus established a temple to Mars Ultor, "the Avenger", within his forum to commemorate his success at avenging the murder of his great-uncle, Julius Caesar. He then placed in one *exedra* statues of Aeneas and his own Iulian family, and in the other Romulus and *summi viri*, and he filled both porticoes with additional *summi viri*. Through this artistic program Augustus promoted himself as "the avenger", the one who brought the assassins of Caesar to "justice". Thus, the link to the two courts is made clear. An avenger exacts justice. As Augustus exacted justice, so the praetors would exact justice, made possible by the emperor who through his own act of imposing justice had brought peace.

The placement of the court of the praetors in their respective *exedrae* strikes a balance in both function and location. Augustus linked his family strongly to the foundation myth of Rome through Venus, the mother of all Iulii, a family that appeared frequently in Rome's urban history. The courts of the highest urban legal authority in Rome resided amongst the artistic representations of the ancestors of Augustus, the restorer of peace, and other *summi viri*.

In the eastern *exedra* and portico, beyond the temple of "the Avenger", were the statue of Romulus, the first *triumphator* of Rome, as well as representations

of the greatest Roman “imperialists, generals, and triumphators”.⁷³ These had subdued and incorporated outsiders – foreigners – into the Roman state, and their message thus was equally powerful for the court of the *praetor peregrinus*, who oversaw disputes between Roman and foreigner.

What messages might such an arrangement have sent to those approaching these courts? For Roman citizens and inhabitants of Rome, the sight must have inspired. The connection between the emperor, the foundation of Rome, and ideas of justice and peace must have filled Roman visitors to the forum with pride in their city and citizenship. The message for non-citizens was vastly different: the standards recovered in 20 BC from Parthia and installed in the Temple of Mars Ultor in 2 BC put the “avenging” nature of the deity in a far more militaristic context.⁷⁴ Such a scene must have firmly told a visiting non-citizen that he or she was the “other”, outside the Roman mantle of empire. One wonders if Trypho, the defendant from Herculaneum disagreeing with a citizen, really expected to obtain justice after walking down that colonnade of generals and *triumphators*, each with an *elogium* citing the peoples he had conquered in the name of *Senatus Populusque Romanus*.

Any attempts to determine when the *praetor peregrinus* moved from the *Forum Romanum* to the Forum of Augustus meet with the same frustration we encountered over the move of the *praetor urbanus*. The two relevant *vadimonia* do not mention a year. Camodeca suggests a *terminus post quem* of 44 based on the mention of “the statue of the triumphal Cnaeus Sentius Saturninus” in the *vadimonia*. This Saturninus is likely the *consul ordinarius* of 41 who played an important role in Claudius’ British campaign. Dio, reporting on Claudius’ return to Rome following the conquest of Britain, states he awarded *ornamenta triumphalia* to many of the senators who had accompanied him. For Rufrius Pollio, Claudius’ praetorian prefect, Dio says this included a triumphal statue.⁷⁵ The evidence suggests that this honor was given to Sentius as well. Using as the meeting location a statue that was a relatively recent addition to the forum (the archive’s end date is roughly 61) and likely, for that reason, more widely known seems most practical. Little more can be added beyond reiterating that, since one of Augustus’ reasons for building this complex was to provide space for legal activities, the move of both praetors may have occurred soon after its completion.

The workings of the praetors’ courts in the Forum of Augustus

Careful examination of these *vadimonia* has necessitated a re-evaluation of how *vadimonia* worked, and how these two courts operated on a daily basis. Previously, it was assumed that all *vadimonia* compelled the parties to meet specifically before the court of the praetor while he was holding court, as *TH* 14 does. The question arose of how the courts in Puteoli or Herculaneum knew exactly on which days and at what hours the praetors of Rome would be in session. It has been suggested that, since other locations near the court of

the praetor were also used, the important legal requirement of a *vadimonium* was that the two parties meet each other and then, at that point, approach the court for their case to be heard.⁷⁶ In this way, even if the praetor was not meeting at that specific time, or if he was too overloaded to hear that case on the given day, the parties would be able to fulfill their legal obligation.

These various rendezvous locations raise two additional issues. Realizing that the praetor may not be presiding at the time specified, disputants may have set their meeting using architectural features of the Forum of Augustus. But how did they determine that location? Were there standardized locations? Rodger suggests that the litigants, not being inhabitants of Rome, chose prominent structures or specific known statues.⁷⁷ This line of reasoning is useful, but it cannot fully explain the locations we find mentioned. Why choose “the altar of Mars Ultor” when the “Temple of Mars Ultor” is substantially more prominent? Would the statue of Diana or Sentius Saturninus, which we find in the *vadimonia*, have been any more prominent than the statues of Q. Fabius Maximus or C. Marius?⁷⁸ Size and uniqueness could be an explanation. The altar of Mars Ultor was clearly smaller than the temple itself and so reduced the chances of the two parties missing one another. We can assume that there were far fewer statues of women, human or divine, in the forum. The statue of Diana, who would be identifiable by the iconography alone, may have been chosen to accommodate the limited literacy of one or both of the litigants.

Yet, was some other motive or system at work? In two documents involving completely different litigants, the *vadimonia* specify the same location “before the triumphal statue of Cn. Sentius Saturninus”.⁷⁹ With so few documents surviving, the chance of such repetition, were the choice of location merely random, seems unlikely. Is it also chance that Martial mentions sealing a document before the same statue of Diana used as a meeting point in *TH* 6? These repetitions suggest that specific locations within the forum were chosen according to the type of issue or the status of the individuals involved.

This idea prompts comparison of the locations found in the extant *vadimonia* with the locations mentioned in another type of relevant document found within the two Campanian archives – the *testatio sistendi*. This document registered either fulfillment or breach of the terms of a *vadimonium*. One *testatio sistendi* refers to events in Rome, and a location is chosen that does not appear in any of the *vadimonia*: “[Rom]ae in foro Augusto [ante] statuam Gracchi [ad colum]nam quar=[tam prox]ime gradus ...”, “at Rome in the Forum of Augustus before the statue of Gracchus at the fourth column near the steps ...”.⁸⁰ These steps are either those of the temple itself or those at the entrances to the complex, in the north-east and south-east corners on each side of the temple. In either case, the statue was certainly near or in the *exedrae* of the forum.⁸¹

Perhaps, then, with two types of documents that required disputants to appear in the Forum of Augustus, we can take the evidence further. Clearly these *vadimonia* functioned to guarantee that the parties to the dispute would meet at the agreed upon place and then go to the praetor’s court. We have

before us seven examples from two collections found in one area of Italy with a range in dates from AD 26 to 75; the total number of such parties coming to the Forum of Augustus from other parts of Italy, and perhaps even beyond, must have been substantial, and under the proposed system the crush on the praetor's court would have been extreme. A streamlining process may have involved assigning a specific location within the forum for *vadimonia*, depending on the nature of the dispute or the identity or status of those involved, at which point the litigants would have been entered into the docket of the praetor's court.⁸² The forum was large and the porticoes, delineated with the statues of the *summi viri*, could have contained tables for judicial officials. Aulus Gellius provides helpful information as he recounts a verbal duel between a praetor and an advocate that took place sometime in the second century:

Quapropter urbanissime respondiſſe praetorem, non indoctum virum, barunculo cuidam ex advocatorum turba, Sulpicius Apollinaris in quadam epistula ſcriptum reliquit. "Nam cum ille," inquit, "rabula audaculus ita postulasset verbaque ita feciſſet: 'Omnia, vir clarissiſſe, negotia de quibus te cogniturum eſſe hodie dixiſti diligentia et velocitate tua profligata ſunt, unum id ſolum relictum eſt, de quo, rogo, audias,' tum praetor ſatis ridicule: 'An illa negotia de quibus iam cognoviſſe me dicis profligata ſint equidem nescio; hoc autem negotium quod in te incidit, procul dubio, ſive id audiam ſive non audiam, profligatum eſt.'"

Therefore Sulpicius Apollinaris left written in a certain letter that the praetor, a not uneducated man, had responded most wittily to a certain simpleton from a crowd of advocates. "For when that man," he said, "that impudent advocate had requested the following he had replied: 'All the business, most excellent sir, which you said you would examine today, has been completed by means of your attentiveness and quickness; only one matter remains, which, I beg, you will hear,' then the praetor with suitable wit: 'Whether that business which you say that I have examined already has been completed, indeed, I know not. However, this business which you are involved in has been ruined, without doubt, whether I hear it or not.'"⁸³

It seems clear that the praetor did at some point announce the matters he would hear on that given day. The creation of this docket would have involved attendants or minor officials to record and organize the parties attempting to have their cases heard.⁸⁴ The most logical place for these officials to organize

the day's activities, or several days' together, would be near the court's meeting place.⁸⁵ It may be possible to link the locations mentioned in the archives with individual officials arranging the court's activities within the forum. The *testatio sistendi* mentions a location not found in any of the *vadimonia* precisely because the nature of the document is different. Those litigants who needed a record either of having fulfilled their *vadimonium* or for proof that the conditions had not been met went to an official who produced such documents from his desk near the statue of Gracchus.

At this point a second issue arises – the references in *TH* 6 and *TPSulp* 19 to numbered columns in the forum. The language does not make clear whether a numeral was etched into each column, like those over each ground-floor arch of the Colosseum, or whether it was assumed that the litigant would count the columns upon arrival.⁸⁶ Those unfamiliar with Rome might have had difficulty determining at which end to start. However, in both cases where a column is mentioned, further details are given that could function as a second check (e.g. the statue of Gracchus, at the fourth column, near the stairs). Again, the level of detail suggests that perhaps individual judicial desks occupied positions at specific columns. The details certainly adumbrate the congestion of this forum during the court season: the location was specific enough that, regardless of crowds, neither party could falsely claim to have appeared.

Employing court officials to deflect and streamline access to the magistrate's court would have been a natural solution to limit the milling about of advocates, litigants, and nosy gossips before the court of the *praetor urbanus*, and no doubt of most other praetors. Apollinaris, in the above passage from Gellius, states specifically that an advocate was "*ex advocatorum turba*", "from the crowd of advocates".⁸⁷ If a large number of matters were to be heard during a specific court session, it would not have been surprising to find a cluster of advocates close by, comparing notes and watching the proceedings. As Apollinaris lived during the second century, he likely describes the court in the Forum of Augustus.

Quaestiones perpetuae: the courts of the other praetors

The courts of the other praetors are mentioned less often in the sources, and thus are even more difficult to locate in Rome. During the last one hundred years of the Republic, several new standing public courts, the *quaestiones perpetuae*, were established. Each court was constituted by an individual law to punish a particular crime or group of crimes, and was presided over by a praetor in the earlier years when the number of courts was small. As courts increased and the number of praetors became inadequate, a new quasi-magistracy was created, the *index quaestionis*, to preside over individual courts.⁸⁸ While *quaestiones perpetuae* continued to function well into the imperial period, new court bodies gradually began to usurp some cases that previously had gone to these courts.⁸⁹ While all praetors likely could have heard any type of legal case, where

they exercised their jurisdiction can be gleaned only through examining the evidence concerning the position of the *quaestiones perpetuae* within the city.⁹⁰

We have no evidence at all for the placement of these courts during the early years of Augustus' reign. A number of the *quaestiones perpetuae* of the late Republic met within the *Forum Romanum* area and these courts likely stayed here into the imperial period, like the courts of the *praetor urbanus* and the *praetor peregrinus*. In 56 BC the hearing of Calpurnius Bestia for *ambitus*, bribery, was located "*in foro medio*", "in the middle of the forum".⁹¹ The use of such a phrase immediately calls to mind the tribunal of the *praetor peregrinus* as a possible location. Arguments have been made to place multiple courts near the court of the urban praetor when it was located at the east end of the Forum.⁹²

We are on firmer ground for the last half of Augustus' reign. While only one detailed piece of information exists for the courts' location in this period, there is no reason to doubt its veracity, and the Forum of Augustus again seems likely:

Fori exstruendi causa fuit hominum et iudiciorum multitudo, quae videbatur non sufficientibus duobus etiam tertio indigere; itaque festinatius necdum perfecta Martis aede publicatum est cautumque, ut separatim in eo publica iudicia et sortitiones iudicum fierent.

His reason for building the forum was the large number of people and cases, which seemed to demand a third, two not being sufficient; and so it was opened hastily, with the temple of Mars not yet finished, and it was provided that the public courts and the selection of the judges would be held in that place separately.⁹³

Based on Suetonius' description, it appears that the housing of the *quaestiones perpetuae* (the *iudicia publica*) was a motive for the forum's construction. It is likely, therefore, that these courts moved from the *Forum Romanum* to the Forum of Augustus in approximately 2 BC. Quite a large space would have been needed since each of the *quaestiones* included a panel of possibly 45 judges under the general supervision of the presiding praetor. As the *praetor urbanus* and the *praetor peregrinus* occupied the *exedrae*, the *quaestiones* likely took advantage of the vast open area of the forum, weather permitting. In poor conditions, the courts may have crowded into the porticoes, which would have been somewhat less accommodating for groups of that size. Settling such a group within a portico would certainly have inhibited the flow of traffic along the sides of the forum, but if the weather were inhospitable enough to drive the courts into the protected area, it would in any case greatly minimize the amount of foot traffic in the forum. However, since individual *quaestiones* did not meet with the same frequency as the *praetor*

urbanus and the *praetor peregrinus*, the *quaestiones* would have been less likely to encounter inclement weather.

Since we hear of no other locations in which these courts met during the imperial period, it seems best to assume that, for as long as they individually continued to function, the *quaestiones* found their new home in the Forum of Augustus suitable.

*A praetor's tribunal*⁹⁴

While it is possible to identify the locations where several of the praetors held their courts, to determine the physical details of their tribunals is much more difficult, though happily less critically important. In the imperial period most structures used as tribunals were temporary, moveable, and therefore made of wood, and would have left no permanent impression on the pavement. That said, however, they were not so temporary as to be dismantled at the end of every court day.⁹⁵ Rather, the tribunals remained in place for the next meeting day, or, if another court was scheduled, the vacant tribunal could be used by other magistrates or for other purposes. If some other use of the space was pending and the tribunal would be in the way it could be dismantled.

Representations of various types of platforms appear in art and coinage.⁹⁶ These structures were used by a variety of people for a range of activities. Surviving images show that while platforms fit into three height categories, the usable surface space had far more flexibility; the number of occupants found on platforms ranges from one to nine. Within the representations are found depictions of magistrates, including praetors, seated on their tribunals holding court. In one example, a relief found near the *Lacus Iuturnae* to the south of the *Forum Romanum*, two individuals argue their dispute before a magistrate.⁹⁷ Although fragmentary, the scene shows one party to the dispute who holds a roll in his left hand and stretches forth his right hand toward the figure on the tribunal. The two hands of his opponent, one of which also clutches a roll, are visible at the left edge of the fragment. While only part of the platform survives, the hands of the opponent suggest that the platform's back edge was immediately to the left of the fragment's edge, resulting in a square shape. Upon the platform a leg of the *sella curulis* is clearly visible, indicating that the man upon the platform, whose legs alone survive, was a magistrate with the right to use this symbol of authority, rather than a *unus index*, a judge who was a private citizen.

Within these types of scenes, the surface area of the tribunal is consistently large enough to accommodate only the seated figure of the magistrate. In no scene is the magistrate accompanied by another. The limited area of these tribunals is further attested to by the report that on one occasion when Tiberius attended the court of a praetor he sat "*in cornu tribunalis*", "at the corner of the tribunal", at ground level, so as not to displace the praetor from his seat.⁹⁸

Clearly, had Tiberius wished to occupy the tribunal, the smallness of the tribunal would have necessitated its abandonment by the praetor.⁹⁹

Unlike their colleagues, the *praetor urbanus* and the *praetor peregrinus* likely spent almost all their court time dealing with *in iure* proceedings. Such a huge amount of administrative work perhaps necessitated the enlargement of the platforms beyond the single-occupant size depicted in art. We saw above that the surface area of the tribunal of the *praetor peregrinus* in the *Forum Romanum* measured 8.9 x 7.9 m. Approximately 72 m² is certainly a far larger size than the praetor would have needed for himself. Such an enlargement could have accommodated various record-keepers (with space even for working tables) and other aides. At the same time, however, we must be cautious. The large size of this tribunal is perhaps linked directly to its location, in that it may have been built larger than necessary to facilitate its use for forum activities other than the praetor's court.

Although we know that assessors served as advisors to many magistrates, the tribunals did not have to be large enough to accommodate assessors as no evidence of an imperial date places them on the structures.¹⁰⁰ In fact, the available information suggests that assessors attending upon most magistrates sat either beside the platform or across from it.¹⁰¹

Whatever its surface area, the tribunal was certainly raised in order to elevate the magistrate while he was seated on his *sella curulis*.¹⁰² Writing in the late first century, Martial speaks of how magistrates cannot get away from enthusiastic well-wishers, even when they are on their "*altum tribunal*", "high tribunal". Martial speaks generally here, including mention of the consul, the tribune, and the praetor. It would appear he believed the tribunals of all these magistrates to be of equal height.¹⁰³ While *altum* does not give us much to work with, among the artistic representations tribunals are so consistently depicted as rising to the waist of an adult standing at ground level before them that it is reasonable to conclude that tribunals typically rose to a height between 1 and 1.25 m.¹⁰⁴ We must remember, too, that the magistrate would have been seated on the tribunal. The required height, therefore, must have been sufficient that the magistrate's head was still higher than that of a person standing before the court at ground level. At the same time, the tribunal had to be low enough to facilitate communication between the seated magistrate and the litigants and advocates.

Some scholars are intent on placing the panels of judges, who are known to have occupied benches, on the tribunal with the presiding magistrate.¹⁰⁵ They rely heavily on two passages of Cicero and the size of the *praetor peregrinus*' tribunal in the *Forum Romanum*.¹⁰⁶ No direct evidence of imperial date can support or refute this theory. While placing them on the tribunal would somewhat sequester the panel and perhaps add to the judges' status, practical aspects make this arrangement untenable. Such a platform would have been very large. Standard anthropometric calculations set by modern architects for the amount of space a single person needs to comfortably stand, sit, or lie

down have determined that a seated person needs approximately 0.84 m² (9 ft²) of space.¹⁰⁷ Using this number, we can calculate that 45 seated people would need a minimum total of 37.80 m² (407 ft²), which results in a platform 6.15 x 6.15 m.¹⁰⁸ It is likely that the presiding magistrate would occupy the same platform and so we should envision a platform slightly larger still. While there would be no difficulty in making such a structure, visibility is an issue. If the platform matched that of the praetor in height, 1–1.25 m, those judges seated in the centre of the block would have had difficulty seeing anyone standing before the platform. This problem could be rectified by constructing the platform as a set of bleachers, each level being able to hold a bench. However, this seems a far more complicated solution to the problem than just leaving the judges at ground level, a position from which all the judges could see the advocate if he stood before them.¹⁰⁹ A statement by Quintilian supports this conclusion. In discussing various movements of the advocate's arms and feet during a speech, he says: "*Multum ex iis, quae praecepimus, mutari necesse est ab iis, qui dicunt apud tribunalia*", "Many of these things which I prescribe will need to be changed by those who speak before tribunals."¹¹⁰ Since Quintilian's discussion here is focused on the public courts with their panels of judges, this passage implies that the judges were not on a platform. Quintilian also says specifically that the defendant should first throw himself to the "*stratum*" (floor).¹¹¹ Surely, he does not mean that the defendant should first climb up on to the tribunal and then throw himself at the feet of a judge. Space on the platform was probably not sufficient to allow for such activity. An alternative arrangement of the judges will be proposed in Chapter Two.

The impact of procedure on a court's location

A further distinction must now be made regarding the courts of the *praetor urbanus* and the *praetor peregrinus*. A private suit consisted of two parts, only the first of which was presided over by the praetor, making it unnecessary that the second part take place in the same location. Often when scholars discuss the topography of the courts, they avoid any specific discussion of this issue, which can lead to confusion. When a source mentions a trial's location, we must attempt to determine the actual procedural stage of the trial – often a difficult, if not impossible, task.

Under the formulary procedure, a private suit started in the court of the praetor (*in iure*). At these proceedings the praetor listened to the argument between the two parties, determined the formula according to which the *unus index* (single judge) or *recuperatores* (a small panel of three or five *iudices*) would provide a ruling, and appointed the *unus index* or *recuperatores* to hear the case. The second stage was the hearing of the dispute itself, held *apud iudicem* (before the judge(s)). During this stage the case would be fully argued and a ruling made, thereby concluding the dispute.

A public trial was also divided into stages. From Cicero's writings we have an understanding of the public procedure in the late republican period. However, this procedure, as well as many other features of the legal system, may have been substantially regulated, if not overhauled, by Augustus' *leges Iuliae Iudiciariae*, the details of which remain completely obscure.¹¹² For our present discussion, it is clear that a trial in a *quaestio* before the full panel of judges was preceded by two or perhaps even three hearings. The first step consisted of the *postulatio*. A party approached the praetor or the *index quaestionis* in charge of the appropriate *quaestio* and asked for permission to prosecute. If multiple accusers were seeking permission, a *divinatio* was held at which it was determined who would win the right. It appears that a panel of judges could be involved in these decisions. The last preliminary hearing consisted of the formal laying of the charge, *nominis delatio*. The accused was required to be present at this point and no panel was involved. The dispute then went to full trial after the *inquisitio*, an interval of time set for the collection of evidence.¹¹³

When we attempt to integrate the procedures for public and private cases with our information for the location of these courts, it becomes clear that we must further specify the portion of the trial we are examining. From the information available, we determined the locations for the courts of the various praetors. Concerning the courts of the *praetor urbanus* and the *praetor peregrinus*, we in fact identified where the *in iure* portion of private disputes took place. With respect to the *quaestiones perpetuae*, which praetors or their representatives oversaw, our information most likely enables us to identify the location of the full trial, rather than of the preliminary hearings.

The respective differences between the stages of both private and public cases greatly influence the composition of those present as well as the size and arrangement of the court. One substantial difference, in the case of public trials, is the absence or presence of a large panel of judges – several dozen people. Scholars apparently do not consider the difference between the two parts of the procedure to have had any real effect on location. Greenidge as well as Richardson, on occasion, assume that both parts of the trial would have occurred at the same place, and draw their conclusions accordingly concerning the size and location of the court.¹¹⁴ Is this a safe assumption? In practical terms of the court activities taking place in Rome on any given day, surely the *praetor urbanus* and the *praetor peregrinus* held *in iure* hearings, while at the same time appointed judges dealt with trials in the second stage, at other locations.¹¹⁵ Yet we have not discussed the location of the courts of single judges or of the *recuperatores* who dealt with the second stage of a private suit, nor the location of the courts of the praetors in charge of the *quaestiones* when they were presiding, without judges, over preliminary hearings.

Does drawing a distinction between the stages of private suits and public trials necessitate that we discover completely different locations for the other stages? Apparently not. The Forum of Augustus was certainly large enough to house the urban and peregrine praetors' courts as well as various *quaestiones*

perpetuae in the full trial stage.¹¹⁶ Suetonius' statement that the forum was built to hold the *quaestiones* is not qualified to include only one or the other phase of the trials. We cannot say unequivocally that if the praetor in charge of a specific *quaestio* were holding court to hear new charges or to deal with a *divinatio*, his *quaestio* was therefore not meeting with a full panel of judges to hear a case at that same time. We know that, due to the constant increase in cases, a *iudex quaestionis* could preside over a *quaestio* in session.¹¹⁷ A possible arrangement of these various elements within the forum could include the several *quaestiones* hearing cases as full courts occupying the large central area of the forum, the praetors of the various *quaestiones* – those not attending their *quaestio* and those whose *quaestiones* were not meeting – registering new cases or listening to hearings within the porticoes, and the *praetor urbanus* and the *praetor peregrinus* doing likewise within the *exedrae*.

It remains to locate the *apud iudicem* portion of private suits within Rome's topography. Evidence for placing private suits before a single judge or *recuperatores* is meagre. We are not given the specific location of any private suit, of an imperial date, that is clearly at the *apud iudicem* stage. Our most helpful evidence comes from Vitruvius, who states specifically that private suits were often held in private homes.¹¹⁸ The home of the presiding *iudex* is a likely location due to its symbolic neutrality.¹¹⁹ Quintilian makes two comments which, although unfortunately vague, may describe this setting. In his discussion of the suitability of types of eloquence for specific courts, Quintilian mentions that it is highly relevant whether an advocate speaks "*loco publico privatone, celebri an secreto*", "in public or in private, before a crowd or separately".¹²⁰ Some chapters later, when discussing gestures and movements appropriate for specific settings, he states that for the advocate to walk diagonally before the judges (and thereby avoid turning his back to the judges) is impossible in private cases because the space is too small.¹²¹ A small space that limited movement, as well as an audience of fewer people than found at a public trial, corresponds well with what one could expect in a private home.¹²²

The evidence is inadequate to determine whether all private suits in the second stage were held in homes; no rule that stipulated this has survived. Presumably, some participants wished for as much public attention as possible and would have resisted such a location. The most likely alternative sites to suggest for such hearings are again the large public spaces of Rome, particularly the *fora*. It is likely that the Forum of Augustus did not host private hearings. Suetonius' statement that all public trials were to be held there suggests that a line was drawn between the two jurisdictions even though the *praetor urbanus* and the *praetor peregrinus* dealt with both private and public matters. And, in practical terms, housing the various courts of the praetors and their *quaestiones* likely filled the forum. The other *fora*, however, had ample space.

While there is little certainty about the location of private hearings, some comments can be made on the physical features of these courts. Single judges

and *recuperatores* likely used tribunals when dispensing justice.¹²³ When discussing the various movements of the advocate's arms and feet during a speech, Quintilian states: "*Multum ex iis, quae praecepimus, mutari necesse est ab iis, qui dicunt apud tribunalia*", "Many of these things, which I prescribe, will need to be changed by those who speak before tribunals."¹²⁴ Since Quintilian focuses on the public courts and the centumviral court, consisting of panels of judges, this passage suggests that an advocate would have found himself working before a tribunal in other situations. Certainly this was the case if the advocate was speaking during the *in iure* proceedings before a praetor. It is possible that during the *apud iudicem* proceedings he faced the same type of structure. In another passage Quintilian specifically refers to speaking before the emperor, a magistrate, and others on tribunals.¹²⁵ Excluding the emperor and magistrates, the most common judges who could realistically have utilized a platform were the single judges and the *recuperatores*. A single judge could have used a platform identical to the single-occupant structure used by magistrates. The *recuperatores*, numbering three or five, could easily have fit on the larger structure suggested for the *praetor urbanus* and the *praetor peregrinus*, or something smaller constructed specifically for them.

In addition to tribunals, benches also are associated with the courtrooms of single judges. Having postponed the private suit he was hearing as a single judge, Gellius mentions that he went "*ab subsellis*" (from the benches) to get advice on how to judge the case.¹²⁶ One could conclude from this passage that judges in private suits merely sat at ground level on a bench and did not use a tribunal. Yet, the specificity of the passage – that he postponed the case, physically got up from the benches, and went in search of advice – seems suspect. It is possible that this is a case of synecdoche, the word "benches" being used to signify the whole court. That the plural form of *subsellium* is used is also suggestive. If Gellius had been talking specifically about what he was actually sitting on, multiple benches would not have been accurate. Yet even if single judges did not use the benches, these certainly would have been sat upon by the parties to the dispute, their advocates, and any audience that may have been present.

Court of the emperor

As the emperor gradually wielded an ever-increasing range of powers, it is small wonder that he also came to be regarded as a source of law and justice. This jurisdiction, like his many other functions, was in constant evolution over the course of the imperial period. The emperor did not follow the two stages of the formulary procedure but rather heard the entire case himself, nor was he bound by all the procedural rules that affected the public courts. As such, the emperor acted "extraordinarily" and so the process by which he exercised jurisdiction came to be called the *cognitio extraordinaria*.¹²⁷ We hear far less in the ancient writings than we might expect about the emperor's courtroom within

Rome itself. For the purposes of this section, I have assembled references that make direct, indirect, or general mention of some physical feature of the emperor's court, be it regarding location or even the identity of someone present. This section places the emperor's courtroom within the city's topography and attempts to reconstruct its physical features.¹²⁸

It is intriguing that an institution seeking constantly to entrench itself in Roman society appears to have been one of the most nomadic of courts. The emperor's court did not have a standardized location such as the Forum of Augustus provided for the *praetor urbanus* and the *praetor peregrinus*. Politics are the most probable explanation. Augustus is known to have striven to hide the extent of his authority, and so we might well expect him to have kept the physical form of his courtroom temporary, while at the same time giving new permanency to the courts of the main praetors. Augustus avoided imprinting his own legal jurisdiction on the topography of the city. As the imperial position became more autocratic under his successors, however, we would expect a permanent location to emerge. Making the functioning of the imperial office seem transparent was important to Augustus, and the dispensation of justice was one of the emperor's few roles that could be exposed to the public gaze. The varied locations, and their continued use during the early imperial period, thus perhaps served to advertise to different sectors of Rome the emperor hard at work on behalf of his citizens.

So, during Augustus' time and later, the legal hearings of the emperor's court were located at various places within the city. Most emperors appear to have heard cases in the *Forum Romanum*.¹²⁹ According to Suetonius and Cassius Dio, Claudius, Vespasian, and Domitian used this location frequently.¹³⁰ Tiberius also used this location, though Dio merely implies the occasions were frequent.¹³¹ Hadrian, too, held court in there. However, in Hadrian's case Dio lists this location as one of many, and accords it no special attention.¹³²

The emperor also held court in the Forum of Augustus.¹³³ Both Claudius and Trajan are specifically identified as hearing cases here, and based on the account of the former we can, in fact, pinpoint the court's location even more precisely. To demonstrate Claudius' gluttony, Suetonius recounts that on one occasion when he held court in the forum, smelling the meal "*quod in proxima Martis aede Saliis apparabatur, deserto tribunali ascendit ad sacerdotes unaque decubuit*", "which was being prepared for the Salii in the nearby temple of Mars, abandoning the tribunal, he ascended to the priests and reclined with them".¹³⁴ This passage, combined with the design of the forum and the above discussion of the praetors' courts in this forum, suggests that Claudius was using one of the praetor's tribunals in one of the *exedrae* located close to the temple itself. We can assume that occasions arose when one of the praetor's tribunals was vacant. Claudius perhaps preferred to position his court in the western *exedra*, with its artistic references to his Julian ancestors.¹³⁵

The imperial residence was also an identified court location. In his old age, Augustus fulfilled his judicial duties by rendering judgment at his home.¹³⁶

It is hard to accept that he would have done so except due to the necessity of old age, since the location smacked of monarchy. Our knowledge of Augustus' house is far too fragmentary to identify a "courtroom", if such a one-purpose room existed.¹³⁷ Over time, however, as the monarchic nature of rule became more visible, the imperial palace accommodated increased legal activity even in spaces we today would identify as particularly private. Already by Claudius' reign we hear that the case of the supposed traitor Valerius Asiaticus was heard in a bedroom.¹³⁸ Vespasian was likely holding court in the reception rooms of the *Domus Aurea*, the imperial residence at the time, when it is reported that he left the court for his afternoon nap.¹³⁹ The construction of the Flavian palace on the Palatine, including the rooms that modern scholars term the basilica, audience chamber, and Lararium, provided a convenient new location for the court.¹⁴⁰ Hadrian apparently held court there.¹⁴¹ Septimius Severus appears to have habitually used a few specific rooms in the palace for his court.¹⁴² Whether these rooms were the reception rooms of the *Domus Flavianae* or were incorporated during his own additions is indeterminable.¹⁴³ Neither the surviving literary references nor the archaeological remains facilitate the placement of the court in any specific chambers of the various palace complexes. This very ubiquity may reveal how interwoven legal matters were with all of the emperor's daily activities.

The imperial gardens also appear to have served for the emperor's legal court. The trial of Isidorus, held in perhaps 53, was heard by Claudius in some gardens, the name of which unfortunately is missing.¹⁴⁴ By Claudius' reign the imperial family owned sizeable estates within the city itself, many of which included gardens, such as the *Horti Agrippae*, *Agrippinae*, *Lamiani*, *Lolliani*, *Maecenatiani*, and *Sallustiani*.¹⁴⁵ The *Horti Agrippinae* apparently sat on the right bank of the Tiber, and it is perhaps here that we find a frustrated Claudius ordering an advocate to be tossed into the Tiber "ἐτύχε γὰρ πλησίον αὐτοῦ δικάζων", "for he chanced to be holding court near to it".¹⁴⁶ The imperial estates subsequent to this time apparently continued to house legal hearings. A number of accounts of Christian martyrs make reference to a variety of specific sites within the *Horti Sallustiani*.¹⁴⁷

We find passing references to other locations as well. The emperor dispensed justice, on occasion, in the Portico of Livia and the Pantheon.¹⁴⁸ Both served a variety of public functions, and their use for this purpose is no surprise.¹⁴⁹ Claudius heard trials before a temple of Hercules, apparently on a regular basis during the summer months.¹⁵⁰ If Claudius' order to throw the advocate into the river is linked with this temple of Hercules, any of the temples associated with Hercules located in the *Forum Boarium* and *Holitorium*, which are near the Tiber, is a possible location.¹⁵¹

Thanks primarily to Cassius Dio, we know of multiple places where a number of emperors dispensed justice. However, at the end of his lists for locations at which Claudius, Trajan, and Hadrian held hearings he also includes the phrase "καὶ ἄλλοθι", "and elsewhere".¹⁵² One can speculate that

this included such obvious locations as the *fora* of Caesar and Trajan, which are not specifically mentioned. Surely we can assume that such omissions are due to the chance survival of information to the modern day. However, we must also conclude that Dio would mention by name the spots found most often in his own sources.¹⁵³

The emperor frequently dispensed justice from a tribunal at these specific locations.¹⁵⁴ When exhausted, Augustus even had a litter placed on the tribunal so that he might continue conducting business in a more restful position.¹⁵⁵ However, it would seem that emperors did not always use a tribunal. Dio's report that Hadrian always used one "ὥστε δημοσιεύεσθαι τὰ γινόμενα", "so that whatever was done was made public" implies that the tribunal was not a permanent necessary element of the emperor's court.¹⁵⁶ Suetonius' comment that advocates resisted Claudius' attempts to leave the tribunal by grabbing hold of his foot suggests that the tribunal was similar in height to that of the praetors: 1–1.25 m (3–4 ft).¹⁵⁷ Many sources reflect that the emperor dispensed justice while seated. The account of Maecenas throwing a message into Augustus' lap urging him to depart from the court is but one typical example.¹⁵⁸ Archelaus, during his trial before Augustus, "προσπίπτει τῶν Καίσαρος γονάτων", "embraced the knees of Caesar".¹⁵⁹ Such an action would have been easier if Augustus had been seated on a raised tribunal, since the suppliant would not even have had to bend, though admittedly the gesture would have been equally likely if Augustus' seat were not elevated. Augustus' use of a litter clearly shows that the surface of the tribunal was large enough to accommodate such a framework.¹⁶⁰

Incidents of physical interaction between the emperor and those attending the court aid in reconstructing the physical environs. The tribunal was not greatly isolated from those in attendance. In one instance, a defendant exasperated with his trial threw a tablet and stylus at Claudius from a distance close enough to cause a wound.¹⁶¹ Maecenas' tossing of the note into Augustus' lap also suggests that both litigants and bystanders were in close proximity to the tribunal.¹⁶²

What, then, was the overall size of the emperor's court? The identification of those present when the emperor dispensed justice bears directly on this question. Obviously, the involved parties, with their advocates, were there.¹⁶³ Bystanders could be numerous as well.¹⁶⁴ The imperial bodyguard was present; Heracleides (admittedly not a trained advocate) could not finish his speech in the court of Septimius Severus because he was intimidated by the presence of the imperial guard.¹⁶⁵ Claudius seems not to have placed any such barrier between himself and the public when he dispensed justice, since a mob incited by ill omens and famine drove him to the corner of the forum, whence he escaped only with the help of troops.¹⁶⁶ Aides to the emperor, present both for his personal needs and also for the good functioning of the court, no doubt resulted in a sizeable group. Dio mentions a man who arranged the cases to be pled before Septimius Severus.¹⁶⁷

One identifiable group was the assessors, who are known to have advised numerous emperors in judicial matters.¹⁶⁸ The number of such advisors who sat with the emperor (as a *consilium*) during a case on any one occasion apparently was not fixed, and most surviving lists appear incomplete. Valuable indication of the number of people in a *consilium* is found in a papyrus of the year AD 13, recording an audience Augustus gave to envoys from Alexandria. Eleven individuals, many of whose listed names are highly fragmentary, apparently worked with Augustus on this occasion.¹⁶⁹ Twelve advisors sat with the emperors Marcus Aurelius and Lucius Verus at a hearing concerning a grant of citizenship.¹⁷⁰ Crook suggests that only parts of the *consilium* would have attended the emperor on any given occasion, which part to be determined by the type of session (judicial, military, general civil affairs) the emperor was conducting.¹⁷¹ Thus, these numbers may represent only one group of the whole. Apparently, the number on a judicial *consilium* could range widely. According to Dio, Claudius dispensed justice almost daily either alone or with the whole senate.¹⁷² In the *Acta Isidori*, Claudius required the participation of only 36 senators.¹⁷³

This same passage raises the question of whether the number of assessors present affected the location where the emperor's court was held.

καὶ καθ' ἐκάστην γε ὡς εἰπεῖν ἡμέραν, ἤτοι μετὰ πάσης
τῆς γερουσίας ἢ καὶ ἰδίᾳ, τὸ μὲν πλεῖστον ἐν τῇ ἀγορᾷ,
ἥδη δὲ καὶ ἄλλοθι ἐπὶ βήματος ἐδίκασε· καὶ γὰρ τὸ κατὰ
τοὺς συνέδρους, ἐκλειφθὲν ἐξ οὗ ὁ Τιβέριος ἐς τὴν νῆσον
ἐξεχώρησεν, ἀνενεώσατο.

Almost every day, either with the whole senate or alone, he [Claudius] dispensed justice from the tribunal, most often in the forum, but sometimes elsewhere; for he renewed the consilium which had been abandoned since that time when Tiberius departed to the island.¹⁷⁴

The force of the “καὶ γὰρ” suggests that Dio sees the location of the court as dependent on whether or not assessors would be present. As their number could apparently fluctuate greatly, the overall number of people present at the emperor's court could also vary widely.

Other possible factors may also have determined the amount of space required for the emperor's court. The size of the general audience in attendance could have been a factor, although difficulties of interpretation quickly arise. From the anecdote recounting Maecenas' failure to reach Augustus we can infer a sizeable group of people.¹⁷⁵ On one occasion, as we saw, the crowd surrounding Claudius' tribunal in the *Forum Romanum* was large enough to drive him from it into a corner of the Forum; however, this crowd panicked by ill omens and famine seems not to have been attending

the legal hearings specifically, but rather to have descended upon the emperor in an accessible location.

It is nonetheless conceivable that the numbers expected to attend the court may not have affected its location. In actuality, many of the spaces used were not designed specifically to house the emperor's court. By contrast, the Pantheon, the Portico of Livia, and most obviously the *fora* could all accommodate the emperor's court with ample room to spare, even if large numbers of individuals attended.

Courts of other magistrates

While the courts of the praetors dominated the legal system in the early imperial period, and thus appear most often in the ancient sources, several other magistrates had jurisdictions. Unfortunately, the evidence is so limited that the courts of only a few of these magistrates can be located in the city with any certainty; for the rest nothing is known.

Over the course of the first and second century, the jurisdiction of the *praefectus urbi*, an ancient office re-introduced by Augustus as a regular magistracy, expanded until it became the main public court for Rome and the area within a 100-mile radius of the city.¹⁷⁶ During the same period the consuls' jurisdiction also expanded to deal with certain matters.¹⁷⁷ These two magistrates, like the emperor, investigated disputes *extra ordinem*, and hence they could hear cases in their entirety, thereby disposing of the multiphase procedures used by the other courts.

Praefectus urbi

Juvenal provides a vivid picture of the court of the *praefectus urbi*:

*Confer et artifices mercatoremque veneni
et deducendum corio bovis in mare cum quo
clauditur adversis innoxia simia fatis.
haec quota pars scelerum, quae custos Gallicus urbis
usque a Lucifero donec lux occidat audit?
humani generis mores tibi nosse volenti
sufficit una domus. paucos consume dies et
dicere te miserum, postquam illinc veneris, aude.*

Consider the craftsmen and seller of poison and the man drawn down to the sea in oxcart with whom is shut in an innocent ape, the fates having turned against them. How great a portion are these of the crimes which the guardian of the city, Gallicus, listens to continuously from sunup until sundown? One court suffices for you if you wish to

know the morals of the human race. Spend a few days
and dare to say that you are wretched, after the
attractiveness found in that place.¹⁷⁸

However, the passage provides only one piece of information useful to our immediate purpose: it seems clear that the court occupied a fixed location, since Juvenal suggests a stable setting for someone wishing to pass multiple days in observation. Coarelli, relying on tenuous links between a passage of Martial that mentions instruments of torture being kept near the entrance to the *Subura* (a neighbourhood located near the city centre), a passage from a lost work of Suetonius, and the belief that instruments of torture were closely associated with the *praefectus urbi*, suggests a location in the area that came to be occupied by the *Temple of Peace*, just to the north and east of the *Forum Romanum*.¹⁷⁹ This site is further supported by the suggestion that the placement of the *Forma Urbis* (a large third-century wall map of the city) in a room of the later *Temple of peace* ties the *praefectus urbi* specifically with this structure.¹⁸⁰ Unfortunately, no irrefutable evidence for this location exists either. For the later imperial period the evidence improves slightly. A location near the Temple of Tellus, bordered by the Baths of Titus and Trajan, the Basilica of Maxentius, and the Colosseum, is possible. This would keep the court in relatively the same region of the city, though shifting it eastwards from the early imperial location, as well as preserving its physical relationship to the *Subura*.¹⁸¹ Considering the important role this court came to play in the governing of Rome, the paucity of details on its location is disappointing.

Consul

Practicality suggests that each consul had his own court.¹⁸² No mention is made of the locations of these courts until the Antonine period, when Aulus Gellius describes a discussion in which he took part:

*In fastigiis fori Traiani simulacra sunt sita circumundique
inaurata equorum atque signorum militarium,
subscriptumque est: "Ex manubiis." Quaerebat
Favorinus cum in area fori ambularet et amicum suum
consulem opperiretur causas pro tribunali cognoscentem
nosque tunc eum sectaremur – quaerebat, inquam, quid
nobis videretur significare proprie "manubiarum" illa
inscriptio.*

In the pediments and all around in the Forum of Trajan
there are gilded representations of horses and military
standards, and written underneath: "From the booty."
Favorinus asked – when he was walking in the open space

of the forum and was waiting for his friend the consul who was hearing cases at his tribunal and we then were accompanying him – he asked, I say, what that inscribed word “from the booty” really seemed to mean to us.¹⁸³

The location of the consul’s court is clearly identified here as the Forum of Trajan. This appears to be the earliest legal activity we can place in this forum. Yet, while Favorinus’ friend was holding his court here on this occasion, was this where he always had his court? Was this where his predecessors (at least since the completion of this forum) and successors always held their court? These are presently unanswerable questions. Where within this forum the consul’s court met cannot be discussed without first considering evidence which, according to J.C. Anderson, proves that the courts of the *praefectus urbi* also occupied this forum.

*Praefectus urbi, praefectus praetorio, and consul in the
Forum of Trajan*

In 1984, Anderson concluded that the courts of the *praefectus urbi* and the consuls could firmly be placed within the Forum of Trajan. He based his argument on fragmentary inscriptions found within the forum that commemorated holders of these offices,¹⁸⁴ the earliest inscriptions from 144 during the reign of Antoninus Pius and the latest from the mid-fifth century.¹⁸⁵ While the location of discovery and the content of these inscriptions cannot be doubted, and potentially helpful information is always welcome, the use of these inscriptions to prove these courts were in this forum is questionable. The function of this forum, paralleling the Forum of Augustus, as a gallery for commemorative inscriptions and statues of distinguished Romans surely explains the high concentration of memorials to men who held these three important administrative posts.¹⁸⁶ Those with the greatest political weight, who served the emperor in military endeavours and were rewarded with such a public display, were the same individuals who reached the pinnacles of the *cursus honorum*. A large concentration of commemorative inscriptions for men who served as consul and *praefectus urbi* is a natural result of such a system, and cannot serve as a secure indication that this forum housed these magistrates’ courts.

We need not despair of finding any evidence. While the purpose for building this forum is not specifically reported, surely we can conclude based on its similar design that this forum, like the earlier *fora* of Caesar and Augustus, was meant once again to enlarge the available space for public, including legal, activities within the city of Rome.¹⁸⁷ Over one hundred years had passed since the completion of the Forum of Augustus, years that saw the appointment of judicial duties to various magistracies previously not involved with legal activities. Clearly, litigation of all sorts was on the rise. The growth of the emperor’s

jurisdiction meant further pressure on Rome, as the home of the emperor (even if he personally was absent) and the judicial capital.

Much later in date, though perhaps still indicative of an earlier reality, the Theodosian Code records a number of laws as having been “passed and published” in the Forum of Trajan.¹⁸⁸ The laws’ subject matter links with these magistrates’ jurisdictions at the time. Of course, it would be unwise to base conclusions about the earlier courts on evidence from some two hundred years later. With our existing information we are forced to be content with rather disappointing conclusions: the consul on at least one occasion held court in this forum, and the *praefectus urbi* perhaps held his court here as well, since the space was conducive; but we have no certain evidence.

The design of the Forum of Trajan, with its monumental size and its apparent imitation of the Forum of Augustus, would have lent itself – even if other evidence is scarce – to providing excellent spaces for courts to use. The forum itself includes the Basilica Ulpia and a large open area lined with porticos. Together, the basilica and open central area make a total space of 9,916 m².¹⁸⁹ This was a very large complex indeed when one considers that a modern football field measures 8,152.79 m².¹⁹⁰

The Forum of Trajan was depicted on the *Forma Urbis Romae*, and fragments survive that show niches of some sort along the curved walls of the apses located on each end of the Basilica Ulpia as well as a large central niche with two pillars at its edges.¹⁹¹ Packer believes these large niches each housed a tribunal with a raised floor that was accessed by an internal stair, ignored by the *FUR* artists.¹⁹² The apses of the Forum of Augustus do not have the same sort of central niche marked off by two pillars, although the wall behind the central niche is deeper. Perhaps this shows an effort to internalize the tribunal within the architecture of the building. Until excavation of the apses can be completed, little more can be proposed.

Again the problem arises of whether the apses, supposed locations for courts, were covered. Packer, on the basis of architectural fragments, believes that there was a series of second-floor windows in the curved wall of the apses, which were roofed. Furthermore, partial excavation of the floor of the west apse from 1928 to 1934 showed no drain.¹⁹³ The basilica itself likely did not have an accessible second floor. Based on numismatic evidence, Packer suggests that an open clerestory of columns rose above the first-floor colonnade that separated the nave from the aisles of the Basilica.¹⁹⁴

The shape of the individual elements of the Forum of Trajan perhaps sheds light on the number of courts that could have met simultaneously, as well as on the arrangement of individual courts in this space. Certainly this large complex could have accommodated thousands of people in a number of courts. Based on the conclusions drawn from the Forum of Augustus, the apses could effectively accommodate the court of a magistrate or judge. Since the apses are largely unexcavated, reconstructions by scholars vary widely. Some very early reconstructions insert three or four steps around the

whole curved wall of the apse to accommodate the panel of judges.¹⁹⁵ Nothing disproves such a possibility. If the central niche did accommodate the presiding magistrate's chair, we can assume that the advocates would face either the magistrate, with their back to the basilica, or stand perpendicular to the magistrate, facing the opposing counsel. In either case it would make most sense for the panel of judges, if the court used such a group, to be arranged alongside the magistrate's niche, facing towards the basilica. Thus, when the advocate spoke his voice would have been carried by the curved wall to the audience, who would have occupied the area of the apse closest to the basilica behind the advocate. This arrangement would also facilitate easy access and egress for the audience, causing minimal disruption to the court.

The large central area of the basilica itself could also accommodate a number of courts. As we will see below, the central area of the Basilica Iulia (approximately 75 x 16 m) is known to have held four courts meeting concurrently.¹⁹⁶ The central area of the Basilica Ulpia could accommodate at least six, perhaps seven, similarly sized courts.¹⁹⁷

Anderson assigns a very different function to the apses of the basilica than Packer. He interprets the niches marked on the apsidal walls on the *Forma Urbis Romae* to be niches for the storage of books and records, and the central niche as capable of holding cabinets for storage. Thus, he suggests the apses served as storage facilities while the courts could use the nave of the basilica and the open area of the forum.¹⁹⁸ While this suggests a practical use of space, it is difficult to believe that the visible artistic apses of the Basilica Ulpia were used as oversized storage closets.

The porticoes of the Forum of Trajan seem unlikely locations for courts, as has already been discussed concerning the Forum of Augustus. Perhaps, as Anderson suggests, various court-related business that did not take place before the magistrate, and did not involve a large number of people, could have been done in this area, using portable furniture and equipment.¹⁹⁹

In addition to these possible ten courts (two in the basilica apses, two in the apses off the open forum area, and six in the central area of the basilica), there is also the large central area of the forum itself. Comparing the proposed square footage of 9,916 m² with the calculated space used by one court in the Basilica Iulia, mathematically the forum area could hold 33.05 such courts. Practically, the number must have been far fewer. But ample space was there. Let us hope that the ongoing excavations of the central area of the forum supply some architectural features, like the surviving tribunal of the *praetor peregrinus* in the *Forum Romanum*, which will clearly locate courts within the area.

The locations of other courts

The above discussion exhausts the evidence for the location of specific legal courts within the city of Rome during the period under consideration. In

light of the ground covered, the results are somewhat disappointing in that we cannot place more courts with any degree of certainty. We know of many other magistrates whose jurisdictions included a judicial function. The *aediles* continued overseeing the markets and streets of Rome into the imperial period and they retained a judicial role, although it appears that many of the disputes at that point went before the *praefectus urbi*. We hear that Nero placed a limit on the fines that *aediles* could impose in their court.²⁰⁰ The tribunes, even though their jurisdiction was greatly restricted when the emperor incorporated much of their power into his own position, also continued to serve a judicial role.²⁰¹ Three other important offices also had the ability to enforce justice: the *praefectus annonae* and both groups of *praefecti aerarii*.²⁰² Other more minor officials also had some judicial duties. The *procurator fisci* heard cases involving monetary disputes between private individuals and the state.²⁰³ The *praefectus vigilum* apparently sat in judgment over crimes involving arson, theft, and burglary, as well as others.²⁰⁴ The *tresviri capitales* perhaps dealt with lesser crimes.²⁰⁵ Judicial powers were also granted to the *curatores* who were responsible for the aqueducts, public buildings, sewers, and the banks of the Tiber.²⁰⁶

Conversely, on occasion we learn of cases held in specific locations, but we cannot identify the court involved. Legal activities within the Forum of Julius Caesar fall within this category. This forum undoubtedly accommodated legal activities; Augustus built his new forum because of “*hominum et iudiciorum multitudo, quae videbatur non sufficientibus duobus etiam tertio indigere*”, “the large number of people and of legal cases, which seemed to call for a third forum, since two were no longer sufficient”.²⁰⁷ Clearly this passage refers to the overflow of legal activities from the *Forum Romanum* as well as from the Forum of Julius Caesar. By this time even Caesar’s forum was no longer adequate. Thus, during Augustus’ reign three large areas, the *Forum Romanum*, the Forum of Julius Caesar, and the Forum of Augustus, would have been constantly reverberating with the noise of legal hearings. In one of Martial’s epigrams, a character boasts of his skill in Rome’s legal theater, saying: “*causas ... agam Cicerone disertior ipso atque erit in triplici par mihi nemo foro*”, “I will argue cases more eloquently than Cicero himself, and no one will be my equal in the three forums.”²⁰⁸

While Appian tells us that Julius Caesar intended his forum to be a place where the people could “ζητοῦσιν ἢ μανθάνουσι τὰ δίκαια”, “seek justice or learn the laws” we must turn to Ovid’s writings to find evidence that Caesar’s goals were achieved.²⁰⁹ The first step in finding love, writes Ovid, is to seek out an appropriate object of one’s affection, and he includes the courts in his list of suitable places to find women:

*Et fora conveniunt (quis credere possit?) amori:
Flammaque in arguto saepe reperta foro:
Subdita qua Veneris facto de marmore templo*

*Appias expressis aera pulsat aquis,
 Illo saepe loco capitur consultus Amori,
 Quique aliis cavit, non cavet ipse sibi:
 Illo saepe loco desunt sua verba disertis,
 Resque novae veniunt, causaque agenda sua est.
 Hunc Venus e templis, quae sunt confinia, ridet:
 Qui modo patronus, nunc cupit esse cliens.*

Even the *fora* (who can believe it?) are suitable for love: often the flame is found in the noisy forum: Lying near [the place] where the marble temple of Venus was built, the Appian nymph strikes the air with forced up water, often in that very place the lawyer is seized by love, and he who was on guard for others is not on guard for himself: often in that expressive place his words fail him, new cases come, and he must argue his own. Venus, from her temple which is adjacent, laughs at him: He who was just recently an advocate, now wishes to be a client.²¹⁰

Anderson, arguing that there are no remains for the fountains in the forum, locates these legal activities in the *Atrium Libertatis* – a feature that ancient sources place just to the north-west of the forum fronting on the *Clivus Argentarius*, thereby explaining the reference to Venus' nearby temple.²¹¹ However, the extensive reconstruction of the forum by Domitian and Trajan makes it difficult to assume that the fountain was never in the forum. Ulrich, in his more recent book, believes the fountain was in fact in the forum, thereby concluding that these cases were taking place in the forum itself.²¹²

The specific courts that occupied the Forum of Julius Caesar defy identification. In addition to the above passage, Ovid comments on legal activities there on two other occasions. He tells us that robbed women often were heard to cry in this forum: “*redde meum!*”, “give me back my own!”²¹³ On another occasion he recounts a scene he saw in which a man was summoning his lover on bail.²¹⁴ The types of cases Ovid mentions apparently focus on relations between the sexes. Divorce is one possible court. Another is the *quaestio de adulteriis*; these three passages from Ovid could all realistically be fitted within the scope of this court, and Ovid was writing shortly after this *quaestio* was established by Augustus.

Yet, the overarching theme of Ovid's work was clearly male-female relationships. It may well be that he chose to comment only on such relevant cases as had taken place in the Forum of Julius Caesar – while similar cases may also have been held elsewhere – precisely because of the literary effect of having the temple of the goddess of love as the audience. Would Roman legal sensibilities have seen a need to link the locale of a specific court with the

temple of the deity who oversaw such issues? We have little evidence of such a connection, although the possible ideological ties between the Temple of Mars Ultor and the courts that resided in the Forum of Augustus cannot be dismissed out of hand.

Where did the courts of the other magistrates discussed above meet? Certain features were necessary, and they recur in the locations of courts we have identified. A relatively large open space was necessary. Some sort of raised area, either an *in situ* architectural feature or a temporary assembled structure, was also needed, as was perhaps some protection from sun and rain such as a portico may supply, though with limited effectiveness. The *Forum Romanum* and the *fora* of Julius Caesar, Nerva, and Trajan could easily have accommodated more courts than those we have been able to assign in the above discussion.²¹⁵ With the construction of the Forum of Augustus and the moving of the *quaestiones perpetuae* to this location, the congestion in the *Forum Romanum* was somewhat alleviated, though for how long this solution remained adequate is uncertain.²¹⁶

We may be able to identify some further possible locations of other courts within the *Forum Romanum* and the Forum of Julius Caesar. Ulrich shows how temple podiums often served as platforms from which individuals addressed the public in the *Forum Romanum*.²¹⁷ He suggests that the platforms of temples could serve as tribunals for magistrates presiding over courts as well, recalling as an example the occasion when Sulla apparently sat in judgment on the podium of the Temple of Castor.²¹⁸ Thus, Ulrich suggests that in the *Forum Romanum* the Temple of Castor and the Temple of Divus Iulius, and in the Forum of Julius Caesar the Temple of Venus Genetrix, all functioned as locations for courts.²¹⁹ But problems arise. Ulrich does not include a detailed description of how a court would be laid out at such a location. He reports that these platforms all have a height of 3.5m (11.5 ft).²²⁰ Yet we have already noted how noisy and cramped the *fora* were; it is difficult to picture how a court could incorporate such a high platform while still facilitating communication between all the parties. If we put only the presiding magistrate or judge on the platform, how could he have heard the advocates' speeches? If we put the speaking advocate on the platform with him, then we really must include the opposing counsel, and possibly the litigants as well, since they would certainly have needed to hear the advocates. If we move all these individuals to the platform, its size becomes an issue, and we also have then all but removed the courts from the *fora* to the temples within the *fora*. Ulrich's attempt to find functions for the podiums of various temples is certainly of value. Unfortunately, it is difficult to integrate his conjectures about the physical space with the practical considerations of a functioning legal court.

We have already seen that courts did occupy spaces beyond the *fora* of Rome. While we have no direct evidence, by utilizing the known locations as templates, we can suggest some other structures within Rome which could have met the needs of the courts. Rome's porticoes would have been suitable.

They offered some separation from the general commotion of the city's activities and provided alternate locations, the colonnades themselves, if the weather was particularly bad and made it impossible for the courts to use the open central areas. We have already heard of Trajan holding court in the Portico of Livia.²²¹ This structure, measuring approximately 115 x 75 m with a double colonnade on all four sides, an apse on the south side, and an open central area, could easily have accommodated various courts simultaneously.²²² The structure was completed during Augustus' reign, and may have been thus used from as early as that time. Ovid mentions this portico, as well as those of Octavia and of Pompey, as good locations to meet women because of the number of people concentrated within.²²³ Possibly these numbers were there to witness the legal proceedings against errant Romans.

The Temple of Peace and the Temple of Divine Claudius were also suitable complexes. The Temple of Peace was enormous (with length and width both approximately 145 m), offered porticoes for weather protection, and was also very well situated close to the other *fora*.²²⁴ Let us hope current excavations of the temple area will bring new information to light. The Temple of Divine Claudius, located on the north-west corner of the Caelian hill east of the Palatine, was rather more isolated, but again offered suitable porticoes and space.

When considering the proximity of a given building to the *fora*, we must also keep the Basilica Aemilia in mind as a possible location. It is puzzling that not a single legal hearing can be assigned to this space. Very similar in structure to the Basilica Iulia, which is known to have housed the centumviral court, it was certainly suitable. Quintilian perhaps speaks of a case that was transferred here during Augustus' day: Marcus Porcius Latro, a professor of rhetoric used to speaking solely in the classroom, was asked to undertake a forensic case. Realizing that he was going to have to speak in the *Forum Romanum* he requested, and received, permission to have the case moved to a basilica.²²⁵ The Basilica Aemilia, located so close to the *Forum Romanum*, is an obvious possibility for this case.²²⁶

Why do the courts of clearly important city officials not appear in the historical record? Negative evidence, though less exciting, may help in solving this puzzle. First of all, many Roman courts were flexible about where they met. The standing jury courts seem to have been quite permanently attached to the Forum of Augustus, and perhaps equally so were the courts of the *praetor urbanus* and the *praetor peregrinus*. However, the emperor's court is found in the *fora*, the Palatine, the Pantheon, and various porticoes. The single judge could meet in a forum, a private home, or any other public space. It is a reasonable assumption that other magistrates held their courts in multiple places as well. This variety of location was likely a response to other events taking place in the heart of the empire. Such occasions as public funerals, games, and the like would no doubt sometimes have forced a court to find another location. The use of one location by multiple courts, or even for other

public events, must also play a role. Thus we find Claudius possibly using the tribunal of the *praetor urbanus* or the *praetor peregrinus* when he held court in the Forum of Augustus near to the Temple of Mars Ultor. If a specific magistrate was not holding court one day, no prohibition excluded another magistrate from utilizing the vacant tribunal. Since few courts were specifically restricted to a certain location, shared use would not have incurred feelings of trespass and encroachment. For these reasons, a Roman writer might have found it of little interest to include in his history a court's location. The locations were common and well known, and the courts in session used them interchangeably, facts that strike home how integrated Roman legal life was within the public daily life of this great city.

Overview of locations

After examining the multiple various locations of tribunals within Rome it is worth considering the impact upon the citizens of Rome of such a distribution of courts. It becomes apparent that some areas must have been very much alive with court activities, a point that indeed is frequently noted by ancient authors. Let us briefly review the various locations.

The *Forum Romanum* easily saw the most legal activity within its boundaries during the last years of the Republic and the first two centuries of the imperial period. Horace calls it the "*differtum forum*", "the stuffed-full forum".²²⁷ While various types of activities could take place there – including individuals reciting their own writings "*in medio foro*" – courts likely filled a good portion of the space.²²⁸ Magistrates, lictors, scribes, litigants, advocates, family, friends, supporters, and general audience seeking a thrill, must all have been swarming through the whole area. We have placed numerous courts within this area. The *praetor peregrinus* occupied a central location. The *praetor urbanus* held court toward the eastern end – perhaps using the speaker's platform attached to the Temple of Divus Iulius. A number of *quaestiones perpetuae* were also in this area during the first half of Augustus' reign, perhaps making use of the space within the Basilica Aemilia as the forum filled. Tiberius, Claudius, Vespasian, Domitian, and Hadrian held court within the forum as well;²²⁹ Claudius was there almost every day.²³⁰ In Nero's reign cases connected with the treasury were also moved here to be heard by *recuperatores*.²³¹ Advocates must have spent a fair amount of their time in this "*forum ... triste*", "sad forum", in the midst of a sea of courts.²³² One great advocate, Philippus, advancing in years, complains that this Forum is too far from his home.²³³

Even with the addition of Julius Caesar's forum, another was still needed. The Forum of Augustus, once completed, housed the tribunals of both the *praetor urbanus* and the *praetor peregrinus*, which somewhat helped to ease the congestion of the *Forum Romanum*. The emperor also sometimes held court here.²³⁴ It seems that all public prosecutions were to be held here as well,

"*separatim*".²³⁵ Apparently legal activities here were so ubiquitous that making an agreement to meet for a legal transaction required choosing a location more specific than "in the Forum of Augustus". Rather, we see references to such places as the "*statuam Cn. Senti Saturnini*" and the "*signum Dianae Luciferae*".²³⁶ Juvenal jokes about the amount of legal activity within this forum, calling a statue of Apollo that stood here "*iuris ... peritus Apollo*", "Apollo learned in the law".²³⁷ Martial describes quite an enterprising advocate, who "*Ultoris prima Martis in aede sedet*", "sits at the entrance of Mars the Avenger's temple" and, apparently due to the demand for his services, is never free until after the tenth hour.²³⁸ From the list of activities we can place in this location, it would seem that during the first century the Forum of Augustus was used very much to its capacity.

Anderson suggests that the Forum of Trajan displaced the Forum of Augustus as "Rome's palace of justice".²³⁹ Such a statement implies that legal activity came to an end in the Forum of Augustus. Considering the size of the empire and the population of Rome, this is most unlikely. Even with the Forum of Trajan sharing the deluge, the courts still appear bogged down. Juvenal moans that everyone is in court with the same complaint.²⁴⁰ Martial's comment, a little earlier in date, is more poetic: "*fora litibus omnia fervent*", "all the *fora* seethe with cases".²⁴¹ The Forum of Trajan housed the court of the consul, and perhaps that of the *praefectus urbi*. The jurisdiction of the urban prefect expanded greatly in the years following Augustus' death; thus, considering that the *Tabulae Sulpiciorum* and the *Tabulae Herculanaenses* are examples from but two communities within Italy, and only from two archives that happen to survive, one can imagine the numbers of similar cases that were coming to Rome from the rest of Italy. This does not even factor in the quantity of legal problems that came to Rome from the provinces through the appeals process. The overall number of proceedings could no doubt easily have filled the available space in the four *fora* of Rome.

In such a physical environment the weather could certainly have had an impact on the courts. Seneca the Elder and Quintilian repeatedly state that the orator must be able to endure sun, wind, and rain while arguing before the court.²⁴² Pliny the Elder as well as Dio record numerous occasions when awnings were stretched across the *Forum Romanum*; Julius Caesar and Marcellus, the son of Augustus' sister, during the latter's aedileship are reported to have covered that space because of the intense heat.²⁴³ The same was done again during the reign of Gaius.²⁴⁴ Pliny states explicitly that Marcellus was attempting to protect those engaged in lawsuits. The increased ratio between portico and open area found in all the imperial *fora* compared to the *Forum Romanum* perhaps suggests some attempt to forestall having to use such *ad hoc* methods of protection. However, considering the number of courts meeting in the Forum of Augustus, for example, we still must conclude that not all courts were housed within the porticoes, and that even the porticoes offered inadequate protection.

The *fora* of Rome clearly maintained strong connections with legal activities throughout the entire period of this study – to such an extent, in fact, as to impact upon the Latin language. Evidence ranging in date from the time of Seneca the Elder to that of Fronto suggests that Romans so linked the *fora* with the courts that they came to generalize the vocabulary for indicating a court's specific location. Seneca the Elder describes the advocate's arena as simply the forum.²⁴⁵ The speakers in Tacitus' *Dialogus* talk of undertaking cases as being "called to the forum" and of the bustling courts as "the frenzied and hazardous forum".²⁴⁶ Fronto refers to his young pupil's transformation into an advocate by saying "he went down to the forum noble by birth, he returned more noble by eloquence than by lineage".²⁴⁷ On another occasion Fronto apologizes to Marcus for his tardy response, saying he was on his way "to the forum" to plead a case.²⁴⁸ Perhaps the clearest generalized use of this term is found in Suetonius' writings when he describes Gaius Albucius Silus' retirement from advocacy with the phrase "he withdrew from the forum".²⁴⁹ From what we have seen above, these remarks clearly cannot be referring solely to the *Forum Romanum*; hearings during these men's lifetimes were being held regularly in all of the *fora*. Rather, we must conclude that references to "the forum" over time came to serve as a non-specific description of legal activity that all understood to describe a broader topographical setting than just the *Forum Romanum*. Such generalized use of the term, however, does suggest that the *fora* accommodated the bulk of Rome's legal activities from Augustus until Marcus Aurelius; otherwise, surely the generalized terminology would not have developed.²⁵⁰ Altogether, there can be no question that the legal activities taking place in Rome filled many of the city's prominent public spaces and certainly made the administration of Roman justice a very public affair.

RECONSTRUCTION OF THE ROMAN COURTROOM

The inhabitants of Rome lived with the reality of legal courts scattered throughout the public and private spaces of the city, and perhaps even came to resent, on occasion, the impact such courts made on traffic flow during the busy hours of the day. One can imagine that on many occasions passers-by with spare time stopped to listen to court proceedings. What did the scene look like? How were the different participants positioned within the space? In Chapter One we considered where courts were located within the city landscape; now we will narrow our focus to investigate the courtroom arrangement and the physical interactions between the various participants.

The greatest obstacle to such a reconstruction is the diversity of court types with their varying number of participants. As we have seen in the preceding chapter, courts consisted of a single presiding magistrate with or without a panel of judges or assessors; in addition, we must remember that these combinations corresponded not only to the nature of the court but also to the phase of the hearing. There are enough common features, however, to make a reconstruction of the standard courtroom a rewarding undertaking, even though we must distinguish between different court types.

The vocabulary used by the ancient authors does, however, complicate such an examination. The problem stems from the identical term, *iudex*, being used both for a judge hearing a case alone and for a member of a panel of judges hearing the same case. Quintilian, for instance, advises that “*ne ambulantes avertamur a iudicibus*”, “when we walk we should not turn our backs to the judges”.¹ There are two possible interpretations of this sentence. With a definite article before “judges”, Quintilian is referring to a panel of judges; without a definite article, he is making a generalized statement about *iudices*, and this sentence would then be applicable to either a single judge or a panel of judges. There is also a further problem. Most single judges – including, for example, the emperor and the *praefectus urbi* – heard cases with *assessores*. While these individuals did not vote on the verdict, they certainly voiced their opinions to the presiding judge. If our ancient authors saw these aides as passing judgment indirectly through their advice, it is conceivable that they used the plural “judges” when in fact they had in mind a single judge with assessors.

Quintilian rarely states that a specific piece of advice concerning a method of argument or a physical movement is applicable only to one type of court (a silence which suggests that he saw little difference for an advocate arguing a case in one type of court or another). However, most of his attention is given to public cases – which would be held either in one of the *quaestiones perpetuae* or before the emperor or the *praefectus urbi* – and important private cases such as those held in the centumviral court. This is a natural choice, for while the bulk of private litigation went before a single judge, the *unus iudex*, cases in the public courts carried with them the harshest penalties and the most publicity, and thus demanded the most from advocates.

This chapter, then, will follow Quintilian's lead and reconstruct a courtroom in which a public case or an important private case, such as those heard by the *centumviri*, would have been heard. First, I categorize the types of people who were typically present at a hearing and so must be included in the reconstruction. Next, I arrange these participants within the courtroom, using surviving evidence of physical contact between the participants and their movement within the courtroom. Finally, I consider in what ways other courts of Rome differed from this reconstructed courtroom; some of the variances are known and require comment. As a second part to the chapter, I examine in more detail the physical arrangement of the four tribunals that made up one of the most famous courts of Rome, the centumviral court, which was housed during this period in the *Basilica Iulia*. Evidence about this court and its environs is uncommonly extensive and therefore warrants special attention.

Types of people present

What types of people were present at a hearing? First, there had to be a person or persons judging the case. Of the groups within the courtroom, this one encompasses the greatest number of permutations. For this reconstruction, however, a presiding magistrate and a panel of judges must be included. Most often the litigants were also present, though the law does not appear to have required their attendance; Quintilian does note that for specific rhetorical devices one's client had to be present and act accordingly.² Advocates typically would be present for both sides, and multiple advocates representing the same side were not uncommon; Pliny mentions multiple advocates appeared for both litigants in the case of Attia Viriola.³ Advocates had various aides, and we hear of *minores advocati*, *librarii*, and *pragmatici* accompanying them into the courtroom.⁴ Pliny cites an occasion when his two attendants were paid to applaud for one side in the centumviral court; the word he uses for them, "*nomenclatores*" (name-providers) identifies their function.⁵ Also present were witnesses for the case.⁶ Finally, the rest of the court would be filled with an audience of variable size. While audience composition will be discussed in a subsequent chapter, we will first consider the physical characteristics of the audience as an entity in the courtroom.

Physical arrangement of the participants

A central element in determining the arrangement of the participants within the courtroom is the “*subsellium*” (bench) that the panels of judges, litigants, advocates, and junior counsel are described as using during hearings.⁷ Meeting in multi-purpose spaces demanded that the benches be portable, making wood the most likely construction material.⁸ The same type of seating also accommodated the members of the senate in the *Curia Iulia*.⁹ Unfortunately, no wooden bench survives. Since a bench that could hold two people was called a *bisellium*, a *subsellium* presumably accommodated at least three people.¹⁰ As for maximum number of occupants, it is believed that traditionally the ten tribunes of the plebs sat on a single *subsellium*.¹¹ Benches were rented by litigants from the *Aerarium*, the state treasury; Nero magnanimously removed the fee.¹²

These benches must then have been arranged around a central point, composed of the presiding magistrate and the panel of judges. The arrangement of the courtroom made physical contact possible between the litigants and the judges. Both Seneca the Elder and Quintilian speak of the effectiveness of a defendant kneeling as a suppliant, and clasping the knees of the judges. This suggests that defendants were close enough to the judges to be able to fall at their feet without having first to traverse the entire length of the courtroom, or fight their way through the audience. An arrangement must then be envisioned in which no obstacles stood between the judges and the benches of the litigants. Two configurations are possible: either both sides’ benches were adjacent but facing the judges, or their benches were facing each other and the judges were at one end. In both arrangements, there would have been open space between the benches of the litigants and the judges. When ancient authors describe the litigants’ location, the Latin definitely contains an inherent sense of antagonism between the two litigants, which suggests the second arrangement is more likely. A son says to his father (his adversary): “*Transibo in subsellia tua, complectar invitum*”, “I will cross over to your benches, I will embrace [you] against your will.”¹³ In another instance Quintilian recalls an advocate’s ploy: “*Transtulit aliquando patronus puellam, quae soror esse adversarii dicebatur (nam de hoc lis erat), in adversa subsellia, tanquam in gremio fratris relicturus ...*”, “Once, an advocate led across to the opposing benches a girl, who was alleged (for the dispute was over this point) to be the sister of the opposing litigant, as if to leave [her] in the arms of [her] brother”¹⁴ This sense of the courtroom space being divided between the litigants even reaches beyond participants physically approaching the opposition’s benches. Quintilian goes so far as to forbid advocates even to lean in the direction of opposing counsel: “*Incumbere advocato adversis subselliis sedenti contumeliosum*”, “To lean towards the advocate sitting on the opposing benches is insulting.”¹⁵ Such language strongly suggests that the Romans viewed the courtroom space as divided into opposing “sides”. The frequent appearance of the prefix *trans-* as well as

the participle *adversus* in the above passages strongly reinforces a physical sense of the sides being in opposition, which would be most effectively conveyed by having the benches facing each other.

The apparently easy movement of individuals from one bench to the other, as the above passages reveal, indicates that no barrier separated the two sides of the court. On one occasion, it appears that Cassius Severus, angered by an advocate who kept crossing to his side, asked the court, tongue in cheek, that such a barrier be erected.¹⁶

With the litigants' benches facing each other, a sizeable open space between the two sides would be conducive for speeches. At most hearings the advocate rose to deliver his speech.¹⁷ Trained to excite listeners' emotions with both words and gestures, an advocate needed space for unencumbered movement. Pliny complains that if he now reads his speech to friends it will not be nearly as effective, since speeches gain from "*dicentis gestus ..., discursus etiam omnibusque motibus animi consentaneus vigor corporis*", "the gestures of the speaker as he strides to and fro, the movements of his body corresponding to his changing passions".¹⁸ Quintilian advises that the only time an advocate should walk about while speaking is "*in causis publicis, in quibus multi sunt iudices, quod dicimus quasi singulis inculcare peculiariter velimus*", "in public cases, in which there are many judges, to impress what we say upon the judges particularly as if they were each a single judge".¹⁹ Further, he holds that an advocate should avoid turning his back on the judges, and move diagonally instead.²⁰ These statements suggest a space consisting of an open square area, bordered on opposite sides by the benches of the litigants and, on the third side, by the judges. In this way, the advocate could easily address the judges as well as opposing counsel without fully turning his back on anyone.

This arrangement of the courtroom also facilitates direct contact between the advocate, the judges, and members of the audience, since the fourth side of the area could contain additional benches. Seneca the Elder recounts an incident he saw involving Asilius Sabinus: "*Memini ... illum ... tristem circa coronam iudici obversari et totiens occurrere eunti Syriaco et quaerere quid haberet spei*", "I remember that he went around the crowd of the court wearing a sad expression, and whenever, making his rounds, he came to Syriacus he asked if he should have any hope".²¹ It appears both Sabinus and Syriacus were making a circuit around the court and repeatedly crossed paths in their movement. The proposed arrangement of the various participants accommodates this movement nicely. We have another account also suggesting a circuit around the court. An advocate, by way of a joke, announces in distress that he cannot carry his client around the court after the opposing client, a child, "*circa indices erat ab avvocato latus*", "had been carried around the judges by his advocate".²²

The occupants of these first benches in both the litigants' and the audience's sections can be partially identified. The litigants and their advocate(s), and perhaps immediate family and closest supporters, occupied the first benches of both sides. The junior advocates, prompters, clerks, and attendants

took their seat on the benches immediately behind the advocate and litigant.²³ Quintilian remarks that an advocate dumbstruck by a sudden problem should not have to turn to his junior counsel “*inter subsellia*”, “on the benches” – for help, so we can assume that they were close by to offer advice.²⁴ People with strong interests in the case – close friends, clients, and the like – most likely occupied the benches immediately behind the litigants and the first row of benches directly facing the judges.²⁵ Importance was attached to a litigant having supporters immediately around him, as indicated by the effort of an advocate to plant his client (the alleged sister of the opponent) on her brother’s bench. Quintilian, who was the opposing counsel in that case and recounts the story, foresaw this ploy and ordered his client to withdraw from the bench before the girl could be seated. The effect lost, the scheming advocate was forced to return with his client to his own bench.²⁶ Interaction between the advocate and his friends required that they also be in the front rows of the benches; perhaps these individuals occupied the benches directly facing the judges. Quintilian comments that advocates, in order to fill the interval when the audience applauds, “*aut in aurem alicuius loquuntur aut cum sodalibus iocantur ...*”, “either say something in the ear of someone or joke with their friends ...”.²⁷ Quintilian also believes the advocate to be insincere who chooses “*reclinari ... ad suos et manibus sustineri, nisi plane iusta fatigatio est*” – “[t]o recline amongst his friends and be supported in their arms, unless he is genuinely entirely fatigued”.²⁸ Again, it is clear that these friends were located close to the open area of the court.

This contact between the advocate and his supporters and the general audience was frequent and apparently could be extremely physical in nature, so much so that the audience might have wished to be farther away; on occasion, an advocate attempting to clear his throat spat on those closest and even, while making an expressive arm gesture, hit them.²⁹ In such circumstances Quintilian acknowledges that “*consistere post eum parum tutum sit*”, “it is scarcely safe to stand behind him”.³⁰

An advocate not only interacted with members of the audience seated in the front rows, but even entered the ranks of the audience for theatrical effect. When his opponent produced a bloodstained sword, one advocate “*subito ex subselliis ut territus fugit et, capite ex parte velato cum ad agendum ex turba prospexisset, interrogavit, an iam ille cum gladio recessisset*”, “suddenly fled from the benches as if in terror, and then, when he was to speak, peeked out from among the crowd, with his head partly covered, and inquired whether that man with the sword had now left”.³¹ Clearly, members of the audience occupied benches abutting the central open area. If the audience had been kept to the rear, the advocate’s buffoonery would have had little effect on the court as a whole. He had to be able to hide within the first couple of audience rows in order still to be seen by opposing counsel and the judges.

The following section will consider the physical arrangement of the audience in greater detail. First, however, the placement of the large panels of

judges (approximately 45 in number) must be considered in light of the above discussion. In Chapter One it was argued that panels of judges did not occupy a tribunal but rather sat at ground level. At the beginning of this chapter the presiding magistrate and the panel of judges were put forward as the central element around which the other participants were arranged. Restricting the judges to one side of the court area is sound, based on the suggested positions of the other courtroom participants. The panel could not occupy the seating immediately bordering on all sides of the central open space, since the litigants, friends of the advocates, and at least some additional advocates evidently occupied these seats. At the same time, however, the defendants could make physical contact with the judges, which required that at least some of the judges had direct access to the open area. Furthermore, it is probable that the panel members sat as a group rather than scattered amongst the general audience. A united group was practical for the advocates, and guaranteed that the judges could hear and see the proceedings. The judges, then, not only occupied the available front area opposite the audience but also must have taken up additional benches immediately behind the front row, forming a block several rows deep. If approximately nine people fit on a bench, and only one bench bordered the open area, then five rows would have accommodated a panel of 45.

The presiding magistrate and his platform must, however, be incorporated with these judges. The most suitable arrangement to ensure that the platform did not block the judges' view places the presiding magistrate at the central axis of that side of the court (Figure 2.1). On either side of the platform, at ground level and placed parallel to the platform, benches would extend for the judges. Since two benches of the judges would now have direct access to the open area, only two additional rows behind each front row would be needed for all the judges. To maintain the judges' line of vision, the front of the magistrate's platform would be flush with the back row of the judges' benches; the two columns of benches would then extend slightly in front of the magistrate's platform – no cause for concern since the elevation of his platform guaranteed a clear view of all activity in the courtroom.

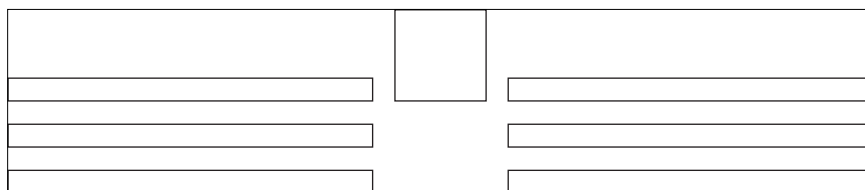


Figure 2.1 Seating arrangement of a presiding officer with multiple judges

Physical arrangement of the audience

Two types of audience can be found at a hearing. As recorded by Tacitus, Aper in his discussion with Messalla and Maternus of the audience's expectations indicates a material distinction: "*Vulgus ... adsistentium et adfluens et vagus auditor adsuevit iam exigere laetitiam et pulchritudinem orationis*", "The attending crowd as well as the approaching, wandering listener, now have come to expect richness and beauty in a speech."³² Aper differentiates between an audience present to hear this particular case or speech, and bystanders who come and go from the proceedings. Thus, he distinguishes the audience based on their physical presence within the courtroom. The "*vulgus adsistentium*" were those who occupied benches within the court, while the "*adfluens et vagus auditor*" describes those who flowed in and out of the space at the back, standing as they observed the court. However, in another passage, Aper also seems to place transient audience members in close proximity to the advocate, when he describes the excitement of making a speech:

*Quae in iudiciis veneratio, quod illud gaudium
consurgendi adsistendique inter tacentes et in unum
conversos, coire populum et circumfundi coram et
accipere adfectum quemcumque orator induerit!*

What respect [one receives] in the courts, what delight
there is in rising up and taking one's position among the
silent [audience, who are] devoting attention to you alone!
A crowd gathers, and before your eyes surrounds you and
adopts whatever mood you, the orator, assume!³³

Again, we get the sense of a bipartite audience: those already present when the advocate rises to speak, and those who are attracted to the court either as the advocate rises or while he is already speaking.

The word *circumfundi* in this passage demands examination (Figure 2.2). On occasion ancient authors also use the word *corona* to describe the audience at a hearing.³⁴ In its most common usage, *corona* means "circle" (just as *circumfundi* implies a circular shape) and could be taken to indicate that the audience in fact completely surrounded the pleader. However, this surely cannot mean that those immediately accessible to the advocate in all four directions were members of the audience. As Quintilian advises, it was most important that the advocate maintained unimpaired focus upon the judges.³⁵ The proposed arrangement of the courtroom discussed above allows the advocate close proximity to the audience, while at the same time maintaining his direct link to the judges. The use of the term *corona* must refer to some audience arrangement that allowed for direct interaction between the advocate, the benches of both litigants, and the judge(s) and yet enabled the advocate to directly engage the audience, perhaps on the remaining one side of the speaking area. Similarly, *circumfundi* does not

necessitate that the audience was immediately bordering on all sides of the speaking advocate. Consider the modern example of a fashion show at a shopping mall. There is a stage, with models entering at one side and exiting at the other, and often an area of audience seats facing the stage front. If the show is good, a crowd of people gathers round, often circular in shape and usually encompassing the stage as well as extending out behind the seating area. If we took our Roman advocate into the mall and positioned him at ground level between the front edge of the stage and the seated audience, we could refer to the gathering crowd as “surrounding” him, even though the description would not be strictly accurate. In this arrangement only the seated audience would have direct access to the advocate. Conceivably we can similarly envision the ancient courtroom, and see the “surrounding crowd” as forming a ring encompassing the entire court with all its benches. The only obstruction would be the tribunal of the presiding magistrate, but since this was relatively small and the speaking advocate constantly moving, it would have minimal impact on visibility.³⁶

The physical form of the group would also have been affected by the size of the audience, which varied widely. We hear of many large audiences, sometimes described as “*densa circumstantium corona*”, “dense surrounding crowd” and “*turba*”, “throng”.³⁷ At the other extreme, we find Maternus offering as one reason for the decline of oratory the fact that audiences consisted of only “*unus ... aut alter*”, “one ... or two”.³⁸ No doubt our sources tend to mention sizeable audiences more often than the occasions when an advocate argued before an empty court.³⁹ Pliny remarks that every pleader loses confidence when he rises to speak before a large, imposing audience.⁴⁰ Two of the four audiences that Pliny identifies as large refer to the centumviral court that met in the Basilica Julia; the third was present to hear him argue a criminal case.⁴¹ Recalling Quintilian’s account of the large audience in which the advocate hid, we can infer from the bloodstained sword that this case also was criminal.⁴² The high stakes involved in the centumviral and criminal courts naturally drew large crowds, sometimes so dense that clothing could get torn in the jostling.⁴³

Those members of the audience who were paid to attend and supply vocal encouragement and praise – the *claque* – likely occupied the audience benches rather than blended with the transient crowd. Juvenal describes the paid audience provided by a patron for a poetry recital:

*scit dare libertos extrema in parte sedentis
ordinis et magnas comitum disponere voces;
nemo dabit regum quanti subsellia constant ...*

He knows how to provide freedmen sitting on the very edge of the row and how to place the loud voices of his hangers-on; [but] no patron will give as much [cash] as the benches cost ...⁴⁴

While the environment is different, the purpose of the planted audience is the same – to blend amongst the other audience members and encourage support. It is reasonable to assume that a similar seating arrangement was used for the *claque* in the courtroom.

The distinction between types of courts

Thus far this chapter has proposed a reconstruction of a courtroom hearing a public case or an important private case. Two passages of the *Institutio Oratoria*, however, show in what ways other courts differed.

In a civil case before a *unus iudex* the arrangement of the judge and advocates may have differed slightly from my reconstruction. Easy access to the audience was far less important; that the advocate could speak while seated is but one indication of reduced concern for communicating with the spectators. The arrangement of the benches of the advocates, with respect to the judge, depends on the interpretation of the phrase “*a laeva iudicis*” in the following passage: “*Nam et dexter pes a laeva iudicis sedenti proferendus est, et ex altera parte multi gestus necesse est in sinistrum eant, ut ad iudicem spectent*”, “For example, he must extend his left foot if he is seated to the left of the judge, and [if he is seated] on the other side it is necessary that many of his gestures

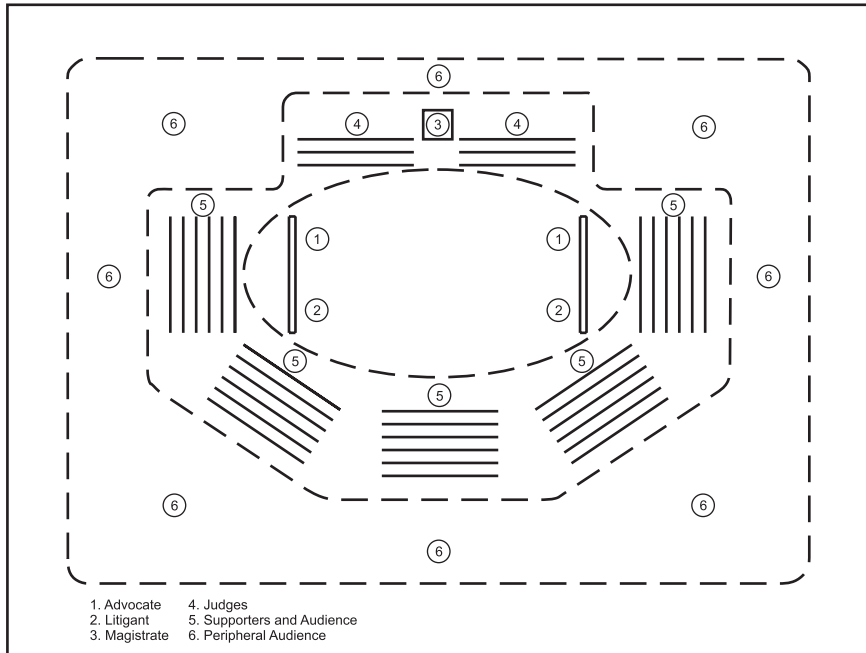


Figure 2.2 Reconstruction of a large courtroom

be offered towards the left, so that they may address the judge.”⁴⁵ A small illustration is helpful:

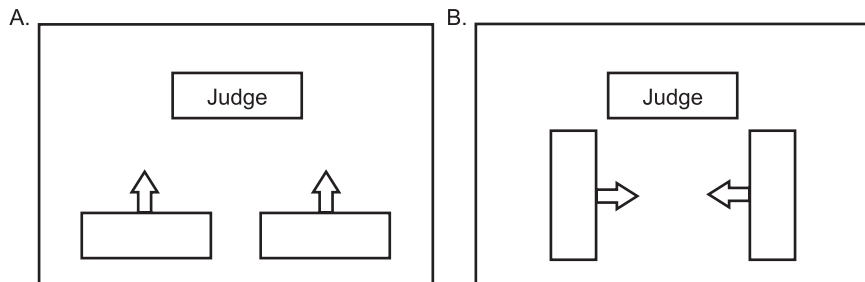


Figure 2.3 Seating arrangement of judge and advocates at a small private hearing

If we conclude that the “left of the judge” was taken to mean the judge’s right side, and the left side of the room (A) when one stood before him, we can conclude that the advocates’ benches were parallel to each other, facing the judge’s tribunal. In this arrangement the advocate to the right of the judge would slightly turn in his seat, by extending his left foot, to face the judge directly, while the advocate to the left of the judge would extend his right foot. If, however, we interpret Quintilian’s remark to mean that the directions within the court are taken as if one is standing behind the judge surveying the courtroom, then “the judge’s left” (as in “stage left”) refers, in fact, to the right side of the room (B). In this case we must reposition the benches of the advocates to face each other, as in our constructed public courtroom, with the judge’s tribunal completing the U shape. Only in this way could the advocate seated on the judge’s left improve his position by extending his left foot. If the benches were directly facing the judge’s tribunal, the advocate on this side would by extending his left foot actually be turning himself *away* from the judge.

Quintilian also informs us that the courtroom of a private case could be much smaller:

Praecipi et illud scio, ne ambulantes avertamur a iudicibus, sed sint obliqui pedes ad consilium nobis respicientibus. Id fieri iudiciis privatis non potest. Verum et breviora sunt spatia, nec aversi diu sumus. Interim tamen recedere sensim datur.

I know that some experts advise that when we walk we should not turn our backs to the judges, but rather move diagonally all the time looking back to the judges. It is not possible to do this in private cases. In truth, the spaces are small and we are not long turned away. Nevertheless, sometimes it is permissible to walk backward gradually.⁴⁶

This is unsurprising. An unimportant case suggests far fewer spectators and, if the advocates often spoke seated at such hearings, little open space would have been needed. However, Quintilian's comment also shows that advocates in such cases spoke standing as well. The available space was restrictive, which may in fact have been why many chose to speak seated. It is also significant that with the wide variety of courts hearing private cases, Quintilian feels comfortable making a generalized statement about the space available to the advocate. We must conclude that the typical space for a standard private case was of a consistent size.

In the previous chapter it was shown that private cases were on occasion held in spaces much smaller than a forum, including private homes.⁴⁷ Quintilian's equation of smaller courtrooms with private cases coincides well with Maternus' statements in the *Dialogus*, that most cases (*causae*) were being heard in his own day (*iam*) in recitation-halls and record-offices – spaces too small to allow the orator to display his skills properly – and the audience might consist of only two or three.⁴⁸ While Maternus does not specify the types of cases heard in these small courts, based on his description of them as "*plurimae causae*" it is possible that he has in mind the private cases described by Quintilian. A smaller courtroom naturally results in a smaller audience. While an audience of two or three may have been the smallest Maternus ever saw, rather than the norm, an audience much smaller than would be found at a sensational murder trial is reasonable. Private cases often dealt with common issues that were unlikely to excite memorable speeches from the advocates. However, Vitruvius certainly has an audience of more than two or three in his mind when he remarks that the homes of high-ranking officials serving the state must have adequate space to accommodate private suits.⁴⁹

Ancient descriptions of the physical features of the Roman courtroom are frustratingly capricious in their level of detail and the amount of knowledge assumed of the reader. Piecing together the evidence, we can nonetheless achieve fair success, as the above shows. It happens that our knowledge of the physical features of one of Rome's most prominent courts, the *centumviri*, is exceptional compared with its counterparts and thus warrants separate discussion. We know much more about this court for two reasons. First, Pliny argued many cases there and so mentions it often in his collected letters. Second, we know the building in which the court convened, and its archaeological remains are substantial enough that we can often fill gaps in the literary descriptions with archaeological evidence, thereby producing a more accurate reconstruction of the court's physical features.

The centumviral court

The *centumviri*, presided over by members of the *decemviri stlitibus indicandis*, heard cases concerning inheritances and property affairs of higher values.⁵⁰

While a variety of ancient authors speak of the court, by far the richest sources are the letters of Pliny the Younger.

The *centumviri* met as either four separate panels of 45 judges or one large panel of 180 judges and can be explicitly placed in the Basilica Iulia, probably for at least two centuries. Begun in 54 BC, the Basilica Iulia was dedicated, unfinished, in 46 and completed by Augustus.⁵¹ Destroyed by fire, perhaps in 12 BC, it was rebuilt and dedicated in AD 12; consumed again by fire, it was rebuilt by Diocletian in 283.⁵² Archaeological study suggests that Diocletian's construction altered neither the ground plan nor the overall size of the original structure, with an accessible second floor gallery from which, according to Pliny, one could look down to the ground floor interior.⁵³ On more than one occasion, Caligula reportedly scattered large sums of money from the upper floor of the basilica outside to the public gathered below in the *Forum Romanum*.⁵⁴ Based on one of Pliny's letters, Giuliani and Verduchi suggest that the second floor stood on top of the ground floor aisles, leaving the central area of the ground floor uncovered except by a third-floor roof, supported by pillars rising above the second floor. Light would have entered the building through this colonnade.⁵⁵ The ground floor was accessible on the west, north, and east sides.

Richardson suggests that the *centumviri* did not take up residency in the Basilica Iulia until the end of the first century AD.⁵⁶ However, to judge by Pliny's report of Domitius Afer speaking before the *centumviri*, and the fact that the story requires the four tribunals to be meeting within a single structure, the Basilica Iulia likely was home to this court before 59, the year of Domitius Afer's death.⁵⁷

With this information from Pliny, it is feasible to reconstruct the interior arrangement of this building while the *centumviri* were in session. First, we must arrange four individual courts within the space; the sources are very clear that the four frequently met within the Basilica at the same time, though each heard a separate case.⁵⁸ Quintilian, describing Trachalus' presentation of a case before the *centumviri*, identifies the listening court as the "*primo tribunali*", "the first court".⁵⁹ Clearly, this was necessary to distinguish between concurrently meeting courts. Since there were two aisles, each measuring 5.5 m across and separated by pillars running on all sides of the central area, we must conclude that the courts met solely in the central area.⁶⁰

Limiting the courts to the central nave is sound for three reasons. First, the columns would have greatly reduced visibility from the aisles. If an advocate had stood in the outermost aisle, a person in the central nave would not have been able to see him at all unless he had been directly in front of the speaker; persons within the aisle closest to the nave would only have been able to see if they stood within approximately 50 percent of the actual space available. If a court had been situated within the columned area, the greatest number of people who could have attended without being impeded by a column would have been approximately 20. A larger audience would have been adversely affected by the columns.

The building's overall design also supports the courts being limited to the central nave. External access to the building was possible on three of its four sides from the *Sacra Via*, the *Vicus Tuscus* and the *Vicus Iugarius*. Situating a court of judges, advocates, and audience in the aisles would have very much inhibited the natural flow of traffic. Concentrating the courts within the central area would have allowed for traffic to move around the nave via the aisles.

Pliny's description of the court during the case involving Attia Virola supports the same conclusion. The courtroom, Pliny says, was so full that men and women occupied the second floor and leaned over in their eagerness to see – which was easy – and to hear – which was difficult.⁶¹ If the court officials and advocates were located in the central nave, this area would have been easily visible from the second floor, but if the court were within the aisles, those on the second floor above would have seen nothing. With the court in the central nave, people on the second floor would in fact have had a much better view than many on the main floor, where it would have become increasingly difficult for the audience to see the speaker once the available benches were filled and only standing room remained. Thus, we can assume that once the main floor space was filled spectators would have moved to the second floor, sacrificing audibility for a clear view.⁶²

* * *

It seems that the various courts, when meeting separately, were invisible to each other, even though their sounds could travel. Domitius Afer, interrupted repeatedly during his speech by noise from another court "*ex proximo*", "close by" – finally asks who is speaking and is told. Apparently he could not see, yet someone else could tell him.⁶³ How did that person know? A court official might have known what other cases were being heard at that time; or did the organisation of the courts mean that someone in the audience, but near the back perhaps, could turn and see who was speaking in the other court? Further evidence of the restricted visibility comes from Quintilian's account of Trachalus' speech. Quintilian reports that Trachalus' voice was powerful enough to be heard, understood, and applauded by all four courts, although he was speaking before only one.⁶⁴ Significantly, Quintilian does not say that he was *seen* by the other courts.

How were these four courts arranged within the 75 x 16 m (12,915 ft²) area? The awkwardness of the space (the ratio is one to four-and-one-quarter for the central nave) greatly restricts the possibilities. The central element of each court was the speaking advocate and we must, therefore, first determine where to locate four such individuals, as far from each other as possible. Any arrangement in which two courts abutted each other so that the judges of each court sat back to back would not have functioned at all efficiently since, when the advocates turned to address the judges of their own court, they would have

been close enough to interfere with the neighboring advocate and audience members standing at the sides of the court. See Figures 2.4 and 2.5.

The advocates needed to be well separated. One alternative arrangement is to place one tribunal on each of the four sides of the central nave, facing the central open area. However, while the physical space available to each court might thereby be equal, the awkward audience space would allow significant interference from neighboring courts. In addition, the close proximity of the two advocates on the longer walls of the rectangle makes this an unworkable arrangement. See Figure 2.6.

Placing two tribunals on each of the long sides of the nave has greater promise. In this case again, however, the courts are, in fact, only 16 m (52.5 ft) apart. Also, while the space for the audience is better in this arrangement, in that each court is more self-contained, the rectangular shape of the space again means that a greater percentage of the audience would have been farther away from the speaker. See Figure 2.7.

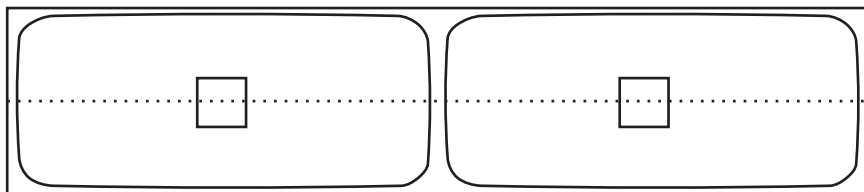


Figure 2.4 Possible orientation of the four tribunals of the centumviral court in the Basilica Iulia

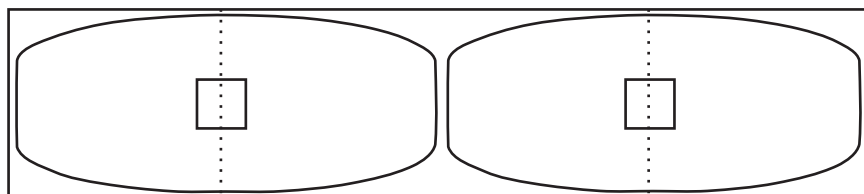


Figure 2.5 Possible orientation # 2

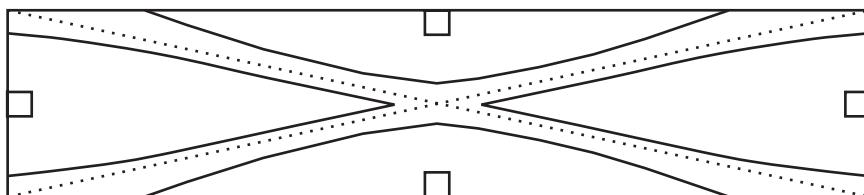


Figure 2.6 Possible orientation # 3

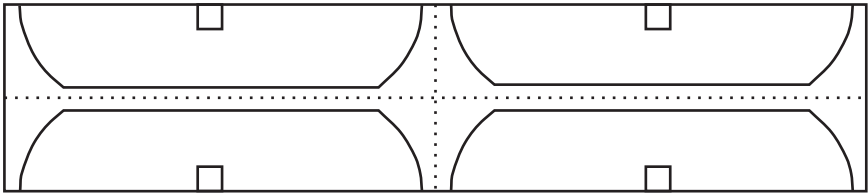


Figure 2.7 Possible orientation # 4

A division of the nave into four equal squares, rather than rectangles, appears to be best. Having the judges in the centre of the square would provide the best accessibility for the largest portion of the audience. All could stand within a practical distance (7.6 m/25 ft) of the central area of activity. However, this arrangement is impossible for two reasons. The main problem is how to arrange the court participants in a circular space. The advocate's main focus was the panel of 45 judges. Thus, he had to retain at least partial contact with them at all times. In this arrangement, any attempt of the advocate to move to the other side would place him behind the judges. See Figure 2.8.

A description from Pliny also discounts this arrangement. Having announced that oratory is not dead, Pliny refers to the physical layout of the court where he spoke:

Proxime cum dicturus apud centumviros essem, adeundi mihi locus a tribunali, nisi per ipsos iudices non fuit; tanta stipitatione cetera tenebantur. Ad hoc quidam ornatus adulescens scissis tunicis, ut in frequentia solet fieri, sola velatus toga perstitit et quidem horis septem. Nam tam diu dixi magno cum labore, maiore cum fructu.

When I was on my way the other day to plead before the centumviral court, there was no room left for me to reach my place from the tribunal except through the judges themselves, as the rest of the floor was crowded. And then a distinguished youth who had had his clothing torn, as often happens in a crowd, remained to listen, clad in only

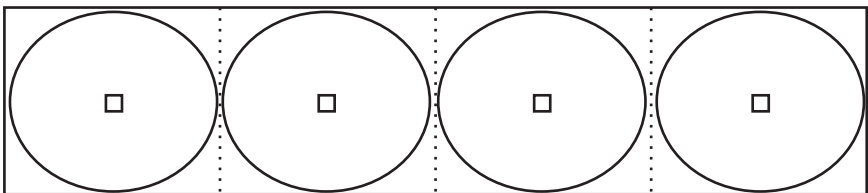


Figure 2.8 Possible orientation # 5

his toga, for seven hours. For this was how long I spoke,
with great effort but with a greater reward.⁶⁵

This passage suggests that the route by which Pliny normally reached his seat was blocked with people, and the only clear approach took him through the judges. We can conclude, therefore, that this fourth side, which the tribunal occupied, was not surrounded. Returning to our last considered physical arrangement, we see that it does not accommodate Pliny's description. If the audience were able to surround the tribunal on all four sides, Pliny would not have been able to reach his seat except by passing through the crowd, and the tribunal would, in fact, have been the hardest location of all to reach.

By moving the tribunals from the centre to the long sides of the rectangle, alternating two on each side, we have an arrangement that best meets the various requirements. The advocates are as distant from each other as possible. The great majority of the audience is within a comfortable distance of the speaker. The space used by each court is strongly divided, permitting as little interference as possible from the other tribunals. By alternating each tribunal's direction, the audience's attention is controlled and focused. This arrangement also correlates well with Pliny's description. The audience would gather facing and to the sides of the tribunal. The columned aisles running behind the tribunal would be left empty since the columns and raised tribunal would interfere with sightlines. Thus, on the occasion when Pliny arrived to a full court, he reached his seat by entering the court from the columned aisle, passing through the judges, and taking his seat within the encircling audience. See Figure 2.9.

While this appears the most promising arrangement of the tribunals, one further factor may warrant a slight alteration. Although alternating the tribunals' orientation logically places maximum distance between the tribunals, the building design perhaps makes it more practical to place all four tribunals on the south side of the central area. This would facilitate people entering the building from all three accessible sides and moving directly to the appropriate court, without using the south aisle at all. If the tribunals were alternated, anyone wishing to enter the one court with its tribunal on the north side, and courts on either side of it, once the space had partially filled would have had to pass behind one of the neighboring

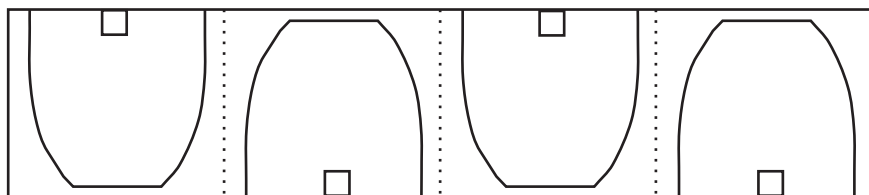


Figure 2.9 Possible orientation # 6

courts' tribunals. In comparison with the previous plan, this arrangement differs only in that the tribunals would be a few feet closer to each other.

This type of arrangement would also accommodate a certain amount of audience overflow better than some of the other models considered. In these final two arrangements the far end of the court – that is, the very back of the audience area – could be accessed easily by newcomers and, if need be, continue to expand out of the central nave into the covered aisles. Visibility would be reduced, but spectators could still hear the speakers. See Figure 2.10.

A careful reading of Pliny's passage above may leave the impression that the judges of each court in fact occupied the presiding magistrate's tribunal of each court. Such a conclusion is disproved by additional evidence. In another letter, Pliny comments that a passer-by did not need to enter the court to discover what the cases were about:

Si quando transibis per basilicam et voles scire, quo modo quisque dicat, nihil est quod tribunal ascendas, nihil quod praebeas aurem; facilis divinatio: scito eum pessime dicere, quo laudabitur maxime.

If, when you pass along the basilica, you wish to know who is speaking and how well they are doing, there is no need for you to ascend to the courtroom or perk up your ears; discovery is easy: you will know who speaks the worst, as he will be the one praised the most.⁶⁶

Surely, Pliny is not saying that people actually climbed up on to the presiding magistrate's tribunal, though he uses the word “tribunal”, and specifically asked him about the nature of the case being heard. We could dismiss this as sarcasm on Pliny's part, though that seems more appropriate for Juvenal. Another way to interpret this phrase “*tribunal ascendas*” is to assume that the ascending must refer to the stairs into the Basilica Iulia. Therefore, the term *tribunal* takes on a far more abstract sense – a reference to the floor of the Basilica Iulia, the location of these various courts, as a tribunal. If we then reconsider Pliny's attempt to reach his seat, the judges no longer have to be on the tribunal itself. Pliny could be using the phrase “*a tribunali*” to mean

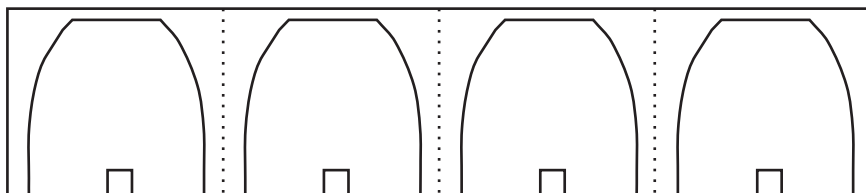


Figure 2.10 Possible orientation # 7

that he had to reach his seat from the area occupied by the officials, including the judges, of the court. Pliny's remark suggests that the judges did sit together as a block; since these courts, like the *quaestiones perpetuae*, involved both a presiding magistrate and a panel of judges, it is no great leap to conclude that the arrangement of the benches for the judges and the presiding magistrate was the same in the centumviral court as has been proposed for the reconstructed public courtroom.

Having determined the most likely arrangement of the four separate courts within the Basilica Iulia, it remains to identify how the same space was utilised when the *centumviri* met as one united court.⁶⁷ As mentioned above, the long rectangular shape of the space is very awkward, and really only two possibilities exist: placing the tribunal at the middle of either the short or the long side of the nave. Considering the acoustics of a building sided with marble, and having no focal architectural feature, the most efficient location would be the long south side of the central nave. The speaker could alternate facing one way or the other, while still keeping the judges at his side. This location would demand that he project his voice as far as half the length of the central nave. In addition, the cost of keeping the judges to his side would be that half of the time the advocate would have his back to half of the audience. These would, however, have been workable exigencies. See Figure 2.11.

Pliny supplies us with a detailed description of the Basilica Iulia during a hearing before a united court. Unfortunately, the vocabulary he uses is somewhat vague, leaving the reader puzzled:

Sedebant centum et octoginta iudices (tot enim quattuor consiliis colliguntur), ingens utrimque advocatio et numerosa subsellia, praeterea densa circumstantium corona latissimum iudicium multiplici circulo ambibat. Ad hoc stipatum tribunal, atque etiam ex superiore basilicae parte qua feminae qua viri et audiendi (quod difficile) et (quod facile) visendi studio imminebant.

One hundred and eighty judges were sitting (that is the number of the four courts joined together), and both sides had enormous legal representation and many benches.

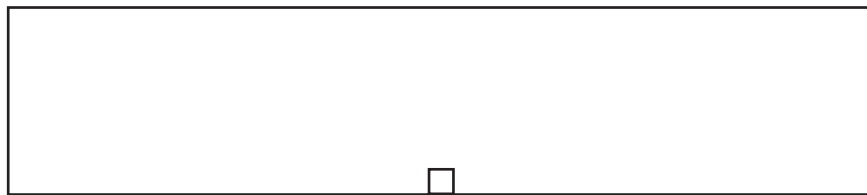


Figure 2.11 Possible orientation of the four tribunals of the centumviral court in the Basilica Iulia when hearing a case as a single court

Moreover a dense crowd of bystanders, several rows deep, surrounded, in a semicircular fashion, the broadest court. The tribunal also was crowded, and even from the higher part of the basilica, women as well as men leaned over in their zeal both to hear (which was difficult) and to see (which was easy).⁶⁸

Obviously, both sides had numerous advocates and rows upon rows of benches for their supporters. Here, the trouble begins. To translate the description of the crowd as “a dense crowd of bystanders surrounded the broadest court in a semicircular fashion several rows deep” fits the Latin. “*Iudicium*” has to be interpreted to mean the court participants, i.e. the presiding magistrate, the *iudices*, the litigants, and their advocates. The use of “*latissimum*” seems strange. However, it fits with the arrangement of the courtroom suggested above. If the tribunal were located on one side, one assumes the 180 judges would be arranged nearby in two groups on either side of the presiding magistrate, and extending more in width than in depth due to the building’s shape.

One further item of information in this description is Pliny’s comment that the tribunal was crowded. This seems to support the argument that the judges did not occupy the tribunal.⁶⁹ If the judges typically accompanied the magistrate, such a comment would be moot. Sherwin-White suggests that perhaps distinguished visitors were invited on this occasion to mount the tribunal of the magistrate.⁷⁰ Pliny’s use of the term “tribunal” in a far more abstract sense in the other passage quoted above, however, suggests that here he is not describing the platform of the presiding magistrate but rather is speaking of the courtroom more generally. This interpretation is further supported by the order in which Pliny describes the scene. He starts with the central element, the judges, then moves to the advocates, sitting before the judges, and the benches close by. Next he describes the audience, then the tribunal, and finally he extends his attention to those still farther away on the second floor. His description clearly moves from the centre of the court to its extremities. “Tribunal” is far better interpreted to mean the court as a whole, as Pliny used it when he described how someone might learn what was going on in the courts. Here he is thus making a more generalized comment that the entire courtroom was crowded, so much so that people were overflowing to the second floor.

This usage of tribunal also simplifies the interpretation of Pliny’s comments quoted above, that he could not reach his seat from the tribunal except through the judges. A narrow interpretation of the word to mean “the platform of the presiding magistrate” would mean that Pliny saw the presiding magistrate and the judges as two very separate physical entities, which is difficult to harmonize with the other evidence. If the tribunal is, in fact, the court as a whole, then the judges and the presiding magistrate remain strongly linked and the argument to place them on one side of the courtroom is even stronger.

Having proposed these physical models for the four individual courts and the united court, I suggest some calculations to determine the number of people they accommodated. First, we must consider those people who were present as parts of the court machinery. At the absolute minimum, there would be two advocates and two litigants per court. To this must be added 45 judges and at least one presiding magistrate.⁷¹ Thus, at least 50 persons would be present. However, we often hear of multiple advocates serving each client in this court, with junior advocates in tow, as well as multiple litigants and numerous close family members and friends.⁷² Thus, just considering the main nucleus we must add a minimum of another 20 people, for a probable total of 70 people per court.

Using standard anthropometric calculations we can determine that, according to our division of the space, each of the four courts could accommodate up to approximately 450 people: 70 people closely involved and 380 of a general audience.⁷³ Some of the audience would have used benches, while the rest stood behind and around. This calculation allows for 85 percent density. Pliny's description of the hearing at which the youth's clothing was torn suggests an even higher density. If we calculate using 90 percent, we reach 475 persons. Estimating the audience present at Attia Viriola's case before the united court, we arrive at a number that certainly would have made Pliny proud; in the central nave alone, he might have addressed as many as 2,150 people.

THE LITIGANT

In the Roman legal system, all private and public legal disputes were initiated by individuals against other individuals, all of whom became litigants once the matter was brought before the magistrate. Hence, for this examination of the Roman courtroom the litigant is of critical importance. Without him, there would be no case for the judge to consider, no arguments for the advocates to press, and no theatrics for the audience to enjoy. And yet, within this study's sources the litigant is a shadowy figure. This paucity of information is partially due to the boundaries I have set. The most mentioned litigants are those tried before the senatorial court. The best source, Tacitus' *Annales*, is full of accounts of men, and some women, hauled before the senate on charges ranging from treason to adultery. Even those cases of a politically charged nature, which Tacitus does not specifically place within the senate, were likely held here, Tacitus being silent on the point merely to avoid stating the obvious.¹ Since this study is not considering the senate as a court, almost all the cases mentioned in the *Annales* are beyond its scope.

It is also clear that extant evidence covers just a very small percentage of the total number of litigants active in Rome in the first two centuries AD. On one occasion Pliny remarks in a letter that cases in the centumviral court are occupying all his time and yet, from all his letters, we glean details of only four such cases.² Hopefully, the evidence we have provides a somewhat representative picture. The randomness with which any case is mentioned within a surviving source must be acknowledged, preventing any firm conclusions based on statistical analysis. The *Digest*, a sixth-century collection of earlier legal writings that includes petitions from individuals to the emperor, provides a slightly better body of evidence for such analysis, and a statistical understanding of Roman litigation has been formulated from that material.³

To properly examine the Roman litigant, we want four pieces of information for any given dispute: 1) the identity of the litigant; 2) whether the litigant argued his own case or had an advocate; 3) the nature of the dispute; and 4) the court in which the case was heard. For extremely few imperial-period cases do we know all four elements, and often we can ascertain only one or two.⁴ Sometimes we learn the identity of a litigant and have no idea of

the nature of the dispute. Sometimes we know the identity of an advocate but are told nothing about his client except his or her sex. Blame for the randomness of information lies with the absence of court records or transcripts rather than with the primary texts. Each identified case is mentioned in our sources for different reasons. In his *Institutio Oratoria* Quintilian often refers to litigants only in another context. For example, he cites a rhetorical device and states that this was “*quod facit Asinius prop Liburnia*”, “what Asinius did in his defence of Liburnia”.⁵ He is interested in the content of the famous speech; the identity of the involved parties, crucial for our examination, is secondary for his discussion. There is certainly no sign in any of the sources that the information provided or withheld follows any sort of pattern.

While the identification of litigants within the courtroom at Rome is one goal of this chapter, no attempts are made to delve into the complete circumstances of each case. Although it is possible, when two of the four elements mentioned above are provided, to speculate as to the missing elements, we would become hopelessly sidetracked if we attempted to completely reconstruct each of the many cases considered in this chapter. Rather, we are interested in discovering the sorts of people who took matters to court and the types of cases in which they were involved.

* * *

This chapter examines the litigant in two settings: outside and inside the courtroom. In the first section, I identify the litigant in terms of sex, age, and status, then examine the motivations that drove individuals to initiate private and public litigation and analyse the emotional impact upon the litigant of going to court, and close with the process of choosing an advocate. The second section considers the litigant within the courtroom itself. After a brief discussion of litigants representing themselves within the courts, I consider the emotions that litigants experienced during the hearing of their case. Next, I examine the physical presentation of the litigant, in terms of dress and hygiene. An exploration of the litigant’s verbal and physical interaction with the other courtroom participants – the judge, the audience, and the advocate – closes the chapter.

Identity of litigants

We can begin to describe the litigants’ general characteristics by considering some numbers derived from this study’s sources. One hundred and fourteen litigants can be identified, involved in 82 cases. Of these individuals, 81 percent (92 total) can be identified as male, and 19 percent (22 total) as female.⁶ The identities of 63 men and 16 women are provided; however, most are nothing more than names to modern scholars and cannot be placed in a more specific historical context.⁷ We are heavily reliant on a relatively few specific sources for

these numbers. Of the 114 litigants, the greatest number are identified in Pliny's letters (22 men, 6 women), Quintilian's work (13 men, 7 women), and Suetonius' writings (14 men, 1 woman). Sixty-five of these men and ten of the women can be put into a specific court with some degree of certainty.⁸ Of these cases, the greatest number were heard by the emperor (18), five were heard in a *quaestio*, and six were in the centumviral court.⁹ As for the nature of the case, the general type can be identified for 33 of the known 82.¹⁰ In the cases involving a male litigant, the subjects most often at issue are murder and treason; other matters include assault, loans, inheritance, forgery, *iniuria* (insult), adultery, and Christianity. For women, the issues most often mentioned are murder or inheritance, but we also hear of loans and adultery. We can identify the roles of 102 of the litigants. Of the men, 59 were defendants while 23 were plaintiffs or accusers.¹¹ Amongst the female litigants, 16 were defendants and four were plaintiffs or accusers.¹² In 29 of the 82 known cases we can identify at least one of the participants on both sides of the dispute (i.e. one of the plaintiffs or accusers and one of the defendants), though identification in some cases is nothing more than that the plaintiff was a rich man.¹³

What sort of conclusions concerning litigants can be drawn from this information? It is tempting to say that the evidence we have is representational – we may not have it all, but we have a random enough sampling. Unfortunately, very little is random about the cases noted in these sources. The recorded cases are the exceptional, the unusual, and ones that held special meaning for the author who included them. Can we say that the approximately 4:1 ratio of male to female litigants accurately represents reality? Indeed, we do hear of far fewer cases involving women, but the accounts of these cases are, on average, more complete; we hear of the courts in which they were heard, the matters at issue, and the names of the litigants, far more often than in the accounts of cases involving men. This completeness is likely because cases involving women were out of the ordinary.

Can we draw any conclusions about the courts or the nature of the cases of which we hear the most? Among the cases involving male litigants, we hear most often of the emperor's court and trials for murder and treason. Cases involving female litigants are also most frequently located in the emperor's court and are dominated by inheritance and murder. This evidence would appear to suggest that the most frequently committed crime in Rome was murder. Again, the impact of recording the unusual and exceptional is apparent. Clearly, murder was not the most frequent crime, but it was far more interesting than the average family squabbles over its father's estate or loans gone bad that likely constituted the bulk of standard litigation.¹⁴ At the same time, the fact that inheritance matters rank so highly among female litigants but do not appear among male litigants is perhaps suggestive. However, care again is warranted. The centumviral court, which dealt primarily with inheritance cases, was seen as one of the most prestigious courts of Rome, and we often learn the identity of litigants within this court

through Quintilian's frequent references to famous speeches by advocates such as Asinius Pollio. A woman as a litigant in the centumviral court was perhaps the rarest sight of all and thus warranted mention.

Such issues do not completely negate the value of this information. Among the identified male litigants we find kings such as Archelaus, the ethnarch of Judaea, and Agrippa II dealing with charges of various types, politicians, and governors such as Lustricius Bruttianus, whose assistant charged him with various crimes.¹⁵ Advocates such as Cassius Severus not only argued cases but could find themselves as litigants, as could powerful and well-connected citizens of communities, such as Claudius Aristion of Ephesus and Antistius Vetus, who is described by Tacitus as a leading citizen of Macedonia.¹⁶ Among those who are nothing more than a name we find businessmen such as Sulpicius Cinnamus and Publicius Carus from Puteoli, equestrians such as Sempronius Senecio, charged with forgery along with his accomplice Eurythmus, a freedman and procurator of the emperor, and soldiers such as Scutarius who fought in Augustus' army.¹⁷ Among the identified female litigants, we find a queen, Berenice from Judaea, and wives and close family members of Rome's upper crust such as Urgulania, Numantia, Arrionilla, and Corellia.¹⁸ Among the women known only by name or relationship we find the wife of a military tribune on trial for adultery, Petronia attempting to prove that she was born free, and Spatale trying to retain what she inherited from her young lover.¹⁹ As is apparent, even among such a small sample the status of the litigants ranges widely; royalty, imperial family, senator, equestrian, free and freed, citizen and non-citizen, are all represented. The wealthy appear far more often than those of lower status. Is this again a sign of skewed reporting? On this matter, we are probably safer accepting the evidence as accurately reflecting reality. The legal system dealt mainly with disputes between those of at least some wealth; the more downtrodden members of society had less property to disagree over, and little time to struggle through the system. But we can hypothesize that litigants of the sort represented in the *Tabulae Herculanenses* and the *Tabulae Sulpiciorum* made up a far greater percentage of the litigants within Rome's courts than they do in the sources. Perhaps these individuals most closely represent the typical litigant.

We have even less information about litigants from outside Rome, although the amount of litigation sent to Rome from outside, either to be heard in the first instance or on appeal from another court, surely resulted in a constant flow of out-of-town litigants or their representatives. The Campanian wax tablets provide only a glimpse of the vast number of such cases every year. The status of out-of-town litigants varied widely, but it can be assumed that the minimum wealth of a litigant was slightly greater than that of litigants who were inhabitants of Rome, since the trip to Rome required some funds. Petronia Iusta, fighting to prove her status as a daughter of a former slave, most likely typifies those of lesser means. At the other end of the spectrum are kings and queens such as Archelaus of Cappadocia and Berenice, the sister of Agrippa II.²⁰

Communities were also litigants. However, many disputes involving communities went before the senate, thus falling beyond this study's scope. Some cases involved communities before the court of the emperor but, unfortunately, problems arise. When we find a community before the emperor are we dealing with a case *per se* or administrative embassies petitioning the emperor?²¹ Nero, as a youth, spoke before Claudius on behalf of Bononia, Rhodes, Ilium, and perhaps Apamea as well.²² At first glance, Nero's involvement as an advocate supports the conclusion that these were legal hearings. However, considering the matters that were dealt with in each of these cases – a request for aid following a fire, a petition for the restoration of liberties, a petition to be released from public obligations, and a petition for relief from tribute after an earthquake, respectively – the events take on a far more administrative tone. If we conclude that these were not legal disputes, then we must also question the two occasions when Tiberius spoke on behalf of Tralles and of Thessaly before Augustus.²³ In the same sentence Suetonius also mentions that Tiberius defended Archelaus, the King of Cappadocia, and in fact the one verb, “*defendit*”, “he defended” applies to all three parties. Such clear vocabulary suggests that the people of Tralles and Thessaly were defendants in a case rather than petitioners; however, we would be far more certain if the subject matters of the disputes were known.

Some hearings before the emperor that involved communities more likely were actual legal proceedings. In the early imperial period the community of Narbo, in Gaul, laid charges of an unknown type against Votienus Montanus, an orator originating in that community.²⁴ In AD 82–83 two neighboring communities, Falerio and Firmum, placed their dispute over land ownership before Domitian.²⁵ In both instances a clear opponent is identified.

Thus, not only do we have very little evidence of communities undertaking litigation in Rome, but what evidence we do have is complicated by the frequent involvement of the emperor's court, thereby clouding an understanding of the natures of the disputes. Despite this frustration, we must not overlook the fact that every reference concerning a community as a litigant identifies the court of the emperor as the location, if the location is named.²⁶ At the same time, we should not assume from these problematic sources that communities were not often involved in legal disputes. Pliny's relatively casual agreement to undertake a “*publicam causam*”, “public case” on behalf of Firmum suggests that such a case was in no way exceptional.²⁷ It is disappointing that Pliny provides no more information on the case – perhaps Domitian's earlier attempt to quell the land disputes had failed and the matter was again coming to Rome.

* * *

Thus far only evidence that gives detailed information about specific individual litigants has been considered, thereby excluding the equally helpful body

of sources that comment more generally about litigants and the disputes in which they participated. Seneca the Younger tells us that the most common cause of legal wrangling was money.²⁸ We hear of disputes in which plaintiffs claim debts that the defendants deny owing, teachers sue for their fees, heirs attempt to claim the earnings of a secretary who died a day before being paid, and swindlers are sued.²⁹ Wards taking their guardians to court are spoken of in a way that suggests this was a common occurrence.³⁰ Most likely such disputes also involved money, more specifically the guardians' management, or mismanagement, of funds. Closely linked to money are disputes in which a party is suing over property, whether disputing a boundary, or challenging the validity of a will.³¹ Disputes over the status of one of the parties (free or slave, citizen or non-citizen) and minor assault also appear to have been common.³²

Various general categories of people are mentioned as typical litigants. I have mentioned wards and guardians as common opponents. In addition, we read of freedmen suing their patrons and vice versa, though it appears that Nerva forbade freedmen from bringing such actions.³³ Sons suing their fathers are mentioned quite frequently and must have taken place after the son had been emancipated from the *patria potestas* of his father.³⁴ From an interesting comment made by Seneca the Elder it would appear that when a son was accusing his father in a public court the son always argued his own case rather than entrusting it to an advocate; unfortunately, no explanation is provided.³⁵ Perhaps undertaking an advocate in such circumstances would have been viewed as the son's attempt to escape dirtying his own hands. Quintilian mentions sons going to court to seek a curator for their fathers' property, with a tone that suggests this was a relatively common occurrence.³⁶ We also hear of sons attacking their fathers' wills, though this was considered distasteful.³⁷ Considered even more objectionable were attacks made by sons against their mothers, yet their very mention suggests they occurred on occasion, though under unknown circumstances.³⁸ Women are also mentioned as a generalized group of litigants. Ovid speaks of "*spoliatae ... puellae*", "robbed women" filling the Forum of Julius Caesar with their cries of "*redde meum*", "give me back my own", referring most likely to the dowries they were trying to recover after a divorce. Much the same must have been at stake in a case briefly mentioned by Martial, in which an "*infamata virum puella vicit*", "a defamed woman defeated her husband".³⁹ A possible scenario would have involved the woman trying to recover her dowry upon divorce but her husband attempting to claim at least a portion of the dowry by charging her with adultery. It is difficult to say how frequent such cases were. Juvenal would have us believe that women were involved in nearly all the cases brought before the courts, either as plaintiffs, accusers, or defendants.⁴⁰ While such an extreme statement may provide insight into the Roman view of women as interfering or overly litigious, it certainly cannot be taken at face value.

Motivation

What motivated individuals to undertake litigation?⁴¹ We must assume that most cases were instigated by one or more individuals believing that they had suffered an injustice, either private or public. However, within any legal system, not all who feel wronged take their issue to the courts and, at the same time, some take others to court even when they have not been wronged. Three primary factors inhibited individuals from approaching the courts: time, money, and influence, all of which were closely linked to status. A litigant needed a flexible schedule to be able to take someone to court. This requirement would not have excluded a large percentage of the population. Even a small shopkeeper no doubt could find someone, perhaps his wife, child, or slave, to manage the store when he spent the day in court over a case of non-payment, for example. Individuals such as manual labourers, however, would be hard pressed. And as the nature of the legal dispute becomes more complicated than simple non-payment, and demands more than a few hours or a day in court, the ability of litigants of lower status to invest the time diminishes. This time was further extended by the slowness of the courts, as they struggled under an ever-increasing number of cases. The situation became so bad on at least a couple of occasions that emperors stepped in to attempt to reduce the backlogs.⁴² Juvenal's telling comment that "*lentaque fori pugnamus barena*", "we fight leisurely battles in the forum" reflects the view held by most Romans of his day regarding the speed of litigation.⁴³ In addition, for those beyond the city who were bringing cases to Rome, even more time was needed for travel, a fact which further supports the assumption that typically litigants who brought their own cases to Rome were of slightly higher status on average than litigants who lived in Rome.⁴⁴

Litigation demanded not only time but also money. The legal system was such that a litigant had to have at least some money to put forward in various circumstances (bail, for example) and a litigant had to be prepared for possible financial penalties that could be incurred not only by making wrongful accusations (*calumnia*) but even by losing a well-intentioned case. A litigant's advocate could be expecting some sort of compensation, and extra money to bribe the judge or panel was a necessity if a litigant had the means for such a tactic. A counter-offer had to be available. The out-of-town litigant who sent a representative rather than going to Rome in person would have to cover the cost of the proxy's travel and expenses.⁴⁵

Finally, another factor a prospective litigant had to consider before going to court was the influence of the potential opposition. There is no doubt that individuals who had a great deal of power and influence were protected from prosecution. How far this protection extended, however, is difficult to discern. A case laid out in Seneca's *Controversiae* provides the best insight into the role influence could play in litigation.⁴⁶ A poor man, believing that his father had been murdered by a rich enemy of the father, continuously followed the

man around in public, dressed in mourning. The rich man stood for election, lost and, believing that he had lost because of the effect this poor man was having on his public image, sued the poor man for injury. Why did the poor man not immediately accuse the rich man of murder? The rich man asks the same at one point: "*Cur me non accusas, non postulas?*", "Why don't you accuse me, lay charges against me?"⁴⁷ The poor man's response is telling: "*Pauper divitem, lugens candidatum ego accusem?*", "Am I, a poor man, to accuse a rich man, am I, mourning, to accuse a candidate for office?"⁴⁸ This is not the only occasion when we hear of individuals hesitating to attack the powerful. In one of Martial's epigrams the speaker wishes to initiate lawsuits with three individuals but his advocate refuses two of the cases because of the influence of the opponents.⁴⁹ People went to court if they thought they could win; if the miscreant was powerful, the number of people who felt they could defeat him was far smaller. In the days following the death of Domitian, Pliny recounts how everyone was taking personal enemies to court – as long as the enemies were not too powerful.⁵⁰ These passages clearly show that those who were deemed "influential" within Roman society were protected by their status from being hauled into court by those of lesser standing. The rich man of Seneca's account believes himself to be suitably armed to withstand any accusations, and we hear of his willingness to spread money around, which we can assume was earmarked for the judge(s). He also does not hesitate to openly threaten his opponent: "*Quid ego in te accusatorem non audeam qui occidendum curavi eum qui tantum mecum litigaverat?*", "What would I not dare to do to you if you accuse me? I, who organized the killing of a man who only quarrelled with me?"⁵¹ And such threats could be backed up with displays of physical might. The rich man not only had money to throw at the problem, he also had numerous clients to accompany him to the court. The appearance of such hangers-on was not just to provide a visually impressive mob of supporters. On at least one occasion such a group physically attacked the advocate of those who were opposing their patron in court.⁵² We can imagine that others who stood in opposition could also find themselves being "dissuaded" from continuing their case.

We have no way of knowing how much litigation never saw the inside of a courtroom because a lower-status litigant felt he had little or no chance of winning his case. While the case between the rich and poor man is hypothetical, as are all the cases set out as the subjects of the *Controversiae*, all are founded in real situations and we must assume that many of the injustices that took place within Rome did so precisely because one party believed the other party had little or no protection.

Those of wealth and influence no doubt felt that their power would discourage others from attacking them in court and, even if they did find themselves in court, their means would guarantee their acquittal. The rich man in Seneca's account says as much: "*nihil unquam putaret sibi timendum, etiam reo*", "he thought that there would never be anything for him to fear,

even if he were accused".⁵³ It is also likely that, while the powerful were at times protected by their status, that very status might encourage those who felt more or less on par to initiate a private suit or a public accusation. Speaking generally of public cases, Ovid remarks that the man most often accused is so because his defeat means gain for the accuser.⁵⁴ In this light, those powerful or rich enough to guarantee that their defeat would bring gain to their opponents were more likely to be attacked. For those with a public reputation built through a political career or the like, any type of case could cause irreparable damage, even if the outcome were exonerating. In some ways, then, the powerful were bigger and better targets than those with little standing or wealth.

We also hear of litigants laying public charges against others not to right an injustice but to hurt the accused by any means possible. In a speech addressing various legal problems, Claudius censures accusers who lay charges and then do not carry through on the case, but instead leave the city on holidays. The charged defendant is left suffering the stigma attached to being a defendant – the true goal of the absentee accuser.⁵⁵ Such a stigma would attach to defendants in both public and private cases, though the publicity no doubt would be far greater in a public case. Litigants also sometimes initiated litigation merely to exact revenge in the courtroom, hoping their advocate would cause injury and insult to their opponent through personal attacks. Some were so desirous of this opportunity to publicly humiliate an enemy that they were even willing to make false claims.⁵⁶

In such circumstances as these, the main goal of the litigation was clearly not a favorable ruling for one party or the other, or a conviction, but to sling dirt and muddy the reputation of one's opponent as much as possible. Quintilian remarks that the best assistance any defendant can have is his own upright character and a blameless past.⁵⁷ As will be shown in greater detail, the advocate's attacks against the opponent were in no way narrowly limited to information relevant to the case at hand, but rather could delve into any corner of the individual's life; the fewer skeletons the advocate could find in his victim's closet the better, from the latter's point of view, though for that matter the attacks did not need to be truthful. One can see how this aspect of legal argument would encourage many a vengeful person to attempt to attack an enemy in court. But, at the same time, this reality no doubt dissuaded many from entering litigation. While attackers saw the opportunity to malign their enemies in court they had to be aware that their enemies would also get a chance to rebut. Attacking their enemies could then backfire, if they wished to keep their own private matters secure from prying eyes and ears. However, if a litigant had a great deal of influence it appears that he could try to limit the extremes to which the hunt would go. Fronto made a deal with M. Aurelius that when he would speak against Herodes Atticus, a friend of M. Aurelius, he would keep his attack narrowly focused to enable Atticus to maintain his reputation.⁵⁸

Losing a case to someone of lesser status and influence could have a substantial effect on one's own status, and thus the impact of court proceedings could extend far beyond the courtroom. An incident involving Augustus is instructive. Having discovered Cinna's plot against him, Augustus had Cinna brought before him and supposedly said:

Male mehercules cum populo Romano agitur, si tibi ad imperandum nihil praeter me obstat. Domum tueri tuam non potes, nuper libertini hominis gratia in privato iudicio superatus es; adeo nihil facilius potes quam contra Caesarem advocare.

By Hercules, the Roman people are in a bad state if nothing except me stands in the way of your taking over as ruler. You cannot guard your own house, not long ago the influence of a freedman defeated you in a private suit; nothing can be easier for you than to take action against Caesar.⁵⁹

Augustus saw the outcome of that private case as an indicator of Cinna's impotency. Losing a case to an opposing party of obviously inferior status must have been particularly damaging to Cinna's standing, a fact which Augustus highlights to indicate Cinna's incompetence.

Since going to court could consume so much time and money and be so damaging to one's status, it is surprising how seldom we hear of people threatening to take others to court unless they are paid off, or initiating litigation and then extorting money from the defendant to end the matter. Horace mentions a man who, when angry, threatened to take his enemies to court but he does not indicate that money was taken instead.⁶⁰ The only pertinent evidence is about Vitellius, who before he became emperor owed money to a freedman. The freedman persisted in demanding payment until finally Vitellius sued him for *iniuria* (injury), claiming the freedman had kicked him. The claim was false, but Vitellius would not drop the matter until the freedman paid him 50,000 sesterces.⁶¹ In a society that placed such value on status and public reputation, we must assume that many paid a great deal to keep matters out of the court and away from the public eye. Unfortunately, their success seems almost complete, for we have little corroborating evidence.

How eager, then, were people to go to court? There was much to lose: time, money, status. One's lifestyle certainly would have been open to public scrutiny. In addition, so many factors came into play that, even if a case were legally sound, a litigant had limited control over the outcome of a case that could be affected by bribery or one's opponent's influence. Why would anyone ever go to court? Because success was possible. If you were wronged, you could have your "day in court", and even if unsuccessful you at least had the

opportunity to inflict some damage upon the public reputation of your opponent and come away feeling that you had exacted some sort of punishment.

Choosing an advocate

No litigant has left any description of how he went about choosing an advocate to undertake his case. If within the family one had a capable speaker with courtroom experience, surely he would have been the most obvious choice. It is thus somewhat surprising that we hear of only one case in which a litigant was related to her advocate. Domitia, a great-niece of Augustus and aunt of Nero, was represented by her husband, Crispus Passienus (whom Seneca the Elder considered to be one of the foremost orators of the Augustan age) in her dispute with her brother, Cn. Domitius Ahenobarbus (Nero's father), over an unpaid debt; in this situation, however, it is possible that since Passienus was both her husband and a skilled orator he was serving as her representative rather than as her advocate and thus was, in a way, arguing the case as the litigant.⁶² If no family members were capable, litigants no doubt approached friends. We have far better evidence from the advocate's perspective for the impact of friendship and patronage on an advocate's decision to undertake a case, a topic that will be considered later. From the perspective of the litigant, the only relevant information concerns Scutarius. A veteran of Augustus' army, Scutarius approached the emperor in public and asked him to defend him on a charge of *iniuria*. Augustus at first claimed he was too busy and tried to pass the case to a friend. The veteran, however, insisted Augustus undertake the case himself, arguing that he had not handed off to someone else his military duty to Augustus. Augustus accepted the case.⁶³

With so little relevant information we can determine very few of the criteria on which litigants based their selection of an advocate. In the case of Scutarius, we must assume that he viewed Augustus as his most powerful patron, and also felt that his service to Augustus warranted such a favor in return. At the same time, it is possible that the pressure Scutarius applied to Augustus was not derived solely from the immediate military link. He approached Augustus "in public", and the bad publicity that could have resulted from Augustus turning his back on a veteran was certainly something Augustus would have tried to avoid, since he made much of his connections to the Roman army.⁶⁴ Publicity was also a concern for those of lower status than Augustus. The negative public opinion that might attach to a person if he refused to represent someone who felt a legitimate claim to his aid may have made many men hesitate to refuse a litigant.

The litigant in the courtroom

It is often difficult to determine whether litigants were represented by advocates at all stages of their cases. We hear of advocates at what are likely

preliminary hearings, and yet we also hear of such hearings with no mention made of advocates.⁶⁵ With such spotty evidence it is difficult to determine when a litigant was actually representing himself. Various litigants' comments during legal hearings were recorded. Is this evidence that the litigant was representing himself without an advocate, or was the litigant simply making a comment in the presence of his advocate? The defendant Manius Curius, for example, made a witty comment, recorded by Quintilian, concerning a canvas painting showing him in various settings, which his accuser produced in court.⁶⁶ But since many of the other witty comments Quintilian records in this section were not even made in the context of a hearing, we certainly must hesitate to conclude that because Curius made this statement he was representing himself.

There is no evidence of women representing themselves in the courts of early imperial Rome. Women who actively argued their own cases in the republican period were viewed as oddities. Among the "memorable doings" recorded by Valerius Maximus, a section is dedicated specifically to "*Quae mulieres apud magistratus pro se aut pro aliis causas egerunt*", "Those women who pleaded before the magistrates for themselves or for others."⁶⁷ Women presented their cases then through representatives – family members, friends, or tutors. Calatoria, a resident of Herculaneum, apparently sent Calatorius Speudon to Rome to represent her interests in a case.⁶⁸ The similarity in their names suggests a familial relationship, and Calatorius was perhaps her tutor as well. Urgulania, a friend of Livia summoned to court over a sum of money, received aid from Tiberius, who went to court to speak on her behalf.⁶⁹ Neither Calatorius nor Tiberius were necessarily serving as advocates for these women, but rather were in a way standing in their place. Such representatives would have enabled women to remove themselves from the public nature of legal hearings if they desired.

On some occasions (though surprisingly few) it is clear that a male litigant argued his own case. It was Seneca the Elder's belief that Cassius Severus only ever defended himself in court, implying that Severus focused on prosecuting others.⁷⁰ We know of three men who defended themselves in the emperor's court: Trebonius Rufinus, a leading citizen and *duumvir* of Vienna, argued his own case and Lustricius Bruttianus and Montanius Atticinus, a proconsul and his assistant, each presented his own side in the dispute between them.⁷¹ That these cases were argued before the emperor cannot be taken as evidence that litigants typically did not use advocates in this court. In several other recorded cases there, advocates clearly participated.⁷²

How common was it for men who had at least the standard amount of rhetorical training possessed by any upper-class man aspiring to a political career to speak on their own behalf in the courts? Certainly those such as Cassius Severus who had careers as orators had the skills to undertake their own cases. Yet even Cassius appears to have been represented by counsel on at least one occasion; we learn of a hearing in which the praetor reproached

Cassius for some comments made by his advocates.⁷³ Even men such as he did, at least on occasion, find other representation; unfortunately, why Cassius found someone else to present the case is unknown. It is disappointing that so little survives about the personal legal activities of those leading Roman citizens of whom we are somewhat well-informed. Pliny must have been involved in at least a few of his own legal disputes over the years, and yet we hear nothing of them in his letters. All we can conjecture from his silence is that such events were so common as to make their inclusion superfluous, which gets us no closer to determining whether he argued in his own interest or had an advocate.

Even when represented, a litigant was commonly present in the courtroom during his case.⁷⁴ On only one occasion do we hear of an advocate dealing with a case in the litigant's absence, though at which stage of the case is not specified.⁷⁵ But no author, not even Quintilian who supplies so much of our information, specifically states that a litigant had to be present.⁷⁶

Emotions

The emotional state of litigants was clearly tied to the type of case or the stage it was at. In one of his satires Horace describes being hounded by a follower who does not want to leave him to attend the preliminary hearing of a case in which he is involved. The admirer decides to skip his appearance and accompany Horace instead.⁷⁷ On this occasion the litigant seems to have been unperturbed, and we must conclude that the case was of little importance, or at least that his failure to appear would not cause him much hardship.⁷⁸ This litigant's calm demeanour is the exception among the available evidence. We hear most often of the emotional distress of defendants, especially those involved in public cases, who frequently are described as suffering some degree of anxiety – frightened, worried, trembling, or pale-faced.⁷⁹ In a letter to Triarius, whose case he is undertaking, Pliny acknowledges his client's anxiety; while Pliny does not mention the nature of the case, he states that the matter is important and hence Triarius will be anxious.⁸⁰

The anxiety and stress felt by litigants, especially defendants, could become quite extreme, as illustrated by an incident in the emperor Claudius' courtroom. An unidentified knight was defending himself against his enemies, on a false charge of improper conduct towards women. Not only were the charges of a particularly embarrassing nature, but in addition his foes paraded several prostitutes through the court as witnesses. Finally, the knight snapped, hurling his writing tablet and stylus at the emperor while rebuking him for his cruelty and stupidity.⁸¹ Here we see the worst possible plight of a criminal defendant: falsely charged with a crime, watching his reputation being blackened by witness after witness but largely unable to fix the situation, he sat waiting for the time when he or his advocate could respond; by that time, though, most of the damage would already have been done, and through stress

and frustration he might lash out. Litigants' stress could lead to even more extreme results. Another knight, Samius, upon learning that his advocate (who had taken 400,000 sesterces in payment) was in collusion with the opposition, despaired of carrying on his case and fell upon his sword in the advocate's house.⁸² While we do not know the nature of the case, we surely can assume that Samius was a defendant in a criminal matter; much could have been riding on the outcome, and to learn that his front line of defence, his advocate, was working against the case would have been devastating.

Clothing

Regardless of his or her emotional state, the litigant was expected on occasion to exhibit a certain physical appearance in order to present an image that would bolster the advocate's argument. Clothing was one important element. The "business suit" of a Roman citizen was the toga, and for private cases this is what Roman litigants wore. The meaning attached to different types of clothing is also illustrated by a public case in which the citizenship of the defendant was somehow an issue. Appearing before the emperor Claudius, the advocates squabbled over whether the defendant should wear a toga or a Greek cloak.⁸³ Claudius ruled that the litigant was to change between toga and cloak, depending upon whether he was being defended or accused by the advocates. While Suetonius presents this anecdote to show the emperor's eccentricities, we can instead see in Claudius' solution his real understanding of how clothing could affect perceptions within the courtroom. At least one of the advocates believed that the litigant's adoption of clothing that could either support or refute his case was a real threat.

Other types of dress were commonly deemed capable of making an important impact in court. Defendants in public cases typically donned dark clothing, traditionally associated with mourning, vestments that were also expected to be shabby and dirty.⁸⁴ Such mourning displays extended beyond clothing; defendants were to let their beards and hair go uncut and put forward a generally unkempt appearance.⁸⁵ We do not hear how a female defendant's toilette was to vary from her typical public attire, although it can be assumed that she too donned dark and dirty clothing. Since Roman women wore their hair long, a female defendant likely would also have adopted the mourning practice of leaving her hair loose and dishevelled for her court appearance.⁸⁶ We can assume that female defendants in addition removed all jewellery, a practice also connected with mourning rites.⁸⁷ Altered in these ways, a defendant's appearance could move the courtroom to tears, presumably by inciting pity and sympathy.⁸⁸ Since it was possible to achieve such a profound effect, it is no surprise that advocates believed such an appearance to be essential for those on trial.⁸⁹

Defendants did not present this unkempt appearance just in the courtroom but adopted it as soon as the charges were laid. Taking advantage of

this practice, spiteful accusers would sometimes bring charges against their enemies and then, by letting the case stall, could force the defendants into mourning attire (and increased humiliation) for an extended period of time. This practice became such a problem during Augustus' reign that he struck off the records all cases that had been pending for great lengths of time due to such designs.⁹⁰ Yet the practice continued. In an oration addressing delays in prosecution, Claudius describes accusers who lay charges against individuals and then purposefully delay, even leaving town for extended periods. The defendants are left "*in albo pendentes*", "hanging on the docket" unable to take the case forward and clear their names.⁹¹ Decades later, Vitellius cancelled pending cases to deal with the same problem.⁹²

Participation of the litigant

The litigant's participation within the courtroom was not limited to being a suitably clad figure silently displayed before the court. He also actively participated within the courtroom by speaking and physically interacting with the advocates for both sides, and with the judge(s). Interestingly, no contact is mentioned between a litigant and the audience. Magistrates and single judges are known to have spoken directly to litigants, even when advocates were present. As mentioned earlier, the praetor residing over a case in which Cassius Severus was a litigant reproached Cassius for some insulting comments his advocates made about a friend of the emperor; Cassius responded with a witty reply.⁹³ On another occasion an advocate had wandered off topic in his speech. Frustrated, the praetor turned to the litigant and stated that he had no counsel present; the advocate replied that he was in fact present, to which the praetor wittily remarked that the advocate, while presenting too much, was doing little to represent his client.⁹⁴ Of interest here is the direct interaction between the magistrates and the litigants, even with advocates present. We cannot go so far as to conclude that judges normally directed all their comments directly to the litigants themselves, because in both anecdotes the praetors were making comments about the advocates themselves rather than about the case. We must allow for the probability that when judges were asking questions about the case these were addressed directly to the advocate.

Nonetheless, it appears that on occasion litigants would verbally participate in the presentation of their case before the judge, even concerning matters with which their advocates were already dealing. In his description of the case he judged between the good man and the rogue, Gellius says of the rogue:

*Is tamen cum suis multis patronis clamitabat
probari apud me debere pecuniam datam
consuetis modis, "expensi latrone," "mensae
rationibus," "chironographi exhibitione,"*

*"tabularum obsignatione," "testium
intercessione," ex quibus omnibus si nulla re
probaretur, dimitti iam se sane oportere et
adversarium de calumniis damnari ...*

Yet, he along with his numerous advocates were proclaiming noisily that the payment of the money ought to be demonstrated before my court by one of the usual ways, by a "receipt for payment," by a "monthly account-book," by "producing a signature," by "sealed tablets," or by the "testimony of witnesses"; [and] if it could not be demonstrated in any of these ways, that surely he ought to be dismissed, and his opponent found guilty of blackmail ...⁹⁵

One gets the sense that poor Gellius felt a bit pressed upon, confronted by at least three men (two advocates and the litigant) all excitedly arguing the same point at the same time. It is difficult to determine whether the rogue's actions were typical or exceptional. Gellius was hearing a private contractual case of some financial value, but without extreme penalties. The entire presentation of the case may have been slightly more relaxed than would be common in cases of greater consequence, and so the rogue might have felt more at ease to actively participate. However, we must also be aware of Gellius' bias. By drawing direct attention to the noisy protestations of the rogue and his advocates, Gellius may be showcasing how this litigant was deviating from what a person of good character would do – the rogue was not content to let his advocates deal with the matter but in his overzealousness and brazenness had also to be directly involved.

In more critical cases such as those before the *quaestiones perpetuae* or in the centumviral court, in which the advocates delivered lengthy, complicated speeches and entered into rapid debates with opposing counsel, we hear nothing of the litigant standing alongside the speaking advocate, verbally adding his own opinion.⁹⁶ In such an environment a litigant did on occasion interrupt his advocate during his speech. Quintilian suggests that if an advocate does not want to proceed down the path of a specific argument he should pretend that he has been interrupted by his client – presumably giving the impression that the litigant demanded he not continue further on that line.⁹⁷ This device would only have been believable if such interruptions occurred at least somewhat frequently. It would seem, then, that even during the advocate's speech a litigant could interrupt and address him directly.

A litigant could aid his advocate by non-verbal methods as well. The litigant's clothing has already been discussed. Advocates also frequently used their clients as "props", making valuable impact by addressing comments

directly to the client during a speech.⁹⁸ Even more important, in Quintilian's estimation, was for the litigant to visually display upon his face the emotional state in which the advocate was describing him within his speech.⁹⁹ Apparently this was too much to expect of many litigants; Quintilian remarks that very often the reality of the litigant's countenance does not match the advocate's description, sometimes causing the audience to laugh.¹⁰⁰

The mourning attire of defendants in public cases, and Quintilian's frequent remarks about moving the judges to pity in such cases, suggest that many litigants were commonly expected to express sadness. Although Quintilian does not mention tears specifically, various authors refer to the tearful faces of those standing trial, while one advocate in his speech tells his female client, a defendant, to "pour forth tears".¹⁰¹ It is likely that downcast expressions were expected of a defendant. We can also hypothesize that expressions of confusion or disbelief on a litigant's face could have been utilized in cases in which the advocate was arguing for the ignorance or victimization of his client. Certainly the litigant would have been told not to display anger, frustration, boredom, or hatred, which could only hurt his case.

In addition to facial expressions, litigants also would have been expected to carry out physical movements to enhance their advocate's speeches. Quintilian mentions how little is the effect of such statements as "*tendit ad genua vestra supplices manus*", "he stretches out suppliant hands to your knees" or "*haeret in complexu liberorum miser*", "the wretched man is held fast in the embrace of his children" if the litigant does not carry out the actual motion.¹⁰² Both of these gestures were feasible from the bench where the litigant sat. He could easily extend his hands towards the judge(s) from a seated position, and it appears that on occasion litigants did physically embrace a judge's knees.¹⁰³ His children could be stationed nearby with other family members, to be clasped at the appropriate moment, although positioning the children at a distance so that they had to run across the court through the audience to their father, for example, would have created a still better theatrical effect and likely generated greater pathos among the audience and the judge(s). Nothing required that litigants remain seated during the hearing and we hear of litigants moving about within the courtroom to carry out the actions requested by their advocates.

Sometimes these requests included having litigants physically interact with their opponents. Quintilian recounts the occasion when an advocate led his young female client over to the bench of Quintilian's client for dramatic effect. Quintilian foresaw the advocate's plan, and told his client to leave his seat beforehand, thereby negating the effect. This anecdote is informative. First, recalling the discussion in Chapter Two of the physical arrangement of the courtroom, it is clear that the participants had physical access to each other. Second, and of interest here, it apparently was not that unusual for a litigant to rise and leave his seat during the arguing of the case. On this occasion Quintilian's client departed somewhat discreetly since it was not until

the opposing advocate was already leading his client over that he realised Quintilian's client was no longer there. At the same time, his departure certainly would have been observed by some of the audience. If it was very unusual for litigants to withdraw in such a way, surely enough of a murmur would have arisen within the court to alert the opposing counsel. We hear of one other occasion when a litigant was physically used as a prop by his counsel. Quintilian writes of the advocate who carried his client, a child, around the court in his arms for all to see.¹⁰⁴ Likely the advocate was attempting to stress his client's young age as well as his need for protection.

These various forms of participation – appearance, facial expressions, gestures, and physical movements – were only as effective as the abilities of the litigant, who to a certain degree was forced to become something of an actor. All gestures and movements must have been prearranged between the litigant and his advocate. In my examination of the advocate's role in Chapter Seven, I discuss how many different expressions and gestures an advocate might use within a single speech. Most likely the same number was not expected of the litigant; too much coordinated movement between an advocate's speech and his client's movements had the potential to turn a persuasive oration into something closer to a vaudeville act. That said, even coordinating a few of the litigant's movements made timing critical. The litigant would certainly have had to pay close attention to his advocate's speech and know when he was to move into position. Transition from an inactive to an active pose – for example, moving from sitting on a bench to advancing to a judge and clasping his knees – to be there when the advocate referred to him might not have been easy. For a person with no experience before the public in such a setting, it was likely very difficult to give a spontaneous feel to the movement and not have it come across as forced. The advocate could help; often, advocates delivered parts of their speech *ex tempore* and an able advocate could slightly adjust the order of his speech or extend a point or two until he saw that his client was properly positioned, and then refer to the client's movement.

While individuals of great wealth may have been able to avoid litigation with greater success than their lesser fellow citizens, and lesser litigants may not have cared that their exposure in the courtroom ruined any chance for a political career, no one was impervious to the damage that could be done by standing as a litigant within the courts. If the case was of great import, the litigants had much to endure; not only did they suffer the stress of an unknown ruling (the outcome could not always been controlled), as well as the character attacks (be they true or false) of opposing counsel, but in addition they were expected, under such strain, to aid in the presentation of their case by whatever means required, from wearing certain clothing to portraying certain emotional states. Whether in an attempt to gain redress for a perceived injustice or merely to inflict damage to the public reputation of an enemy, initiating litigation was not something to be undertaken lightly.

THE JUDGE

One day in approximately 150, a young man stood before the praetor and stated that, for all his efforts, he could not reach a verdict in a case that had been set before him. The case presented a moral problem to Aulus Gellius. A respectable man had no proof that he had loaned money to a less than respectable man, and this scoundrel claimed no such loan had been made. Aulus Gellius realised that the law required him to accept the scoundrel's word, but he could not bring himself to rule accordingly, so he sought the advice of those friends whom he asked to be advisors on the case, and also asked the opinion of his philosopher friend Favorinus. The former gave him the correct legal opinion, the latter the correct moral opinion.

This case came to Gellius through Rome's legal machinery. Although he had no courtroom experience or expertise in the intricacies of Roman law, he met the necessary qualifications of age and wealth. He appeared on the lists from which magistrates could choose judges. So, a praetor chose Gellius as one to hear cases dealing with private law, most of which, as in the above case, involved financial disputes. While pride may have been the first emotion Gellius felt when chosen to fulfil this duty of the upper-class Roman citizen, the pressure of trying to reach the "right" verdict, of balancing the law with the cultural prejudices of his society, no doubt took the bloom off the rose of being a Roman judge.

The judge within the Roman courtroom is the focus of this chapter. Since the judge plays a central role in a legal hearing – he gives the ruling and therefore controls the outcome of the case, the ultimate goal of the event – it is surprising how limited is the evidence. Yet, in a way, his role is more passive than that of the advocate or even of the audience. For the most part, he listens. He is not a force with whom the advocate constantly struggles to admit certain information. The Roman court process gave the advocate significant latitude in the avenues of attack he utilized, whether character assassination or masses of irrelevant information. Therefore, the

Roman judge was not constantly making rulings throughout the hearing of whether a piece of information or an avenue of inquiry was relevant and acceptable. Additionally, in the Roman courtroom, as in its modern successor, interest tended to focus on the contest, the agon between the advocates, and the evidence certainly reflects this. Unlike evidence on the advocate, about whom quite a bit of first-hand information is available, evidence for the judge (as for the litigant) is far more indirect. Only one first-hand account of a legal hearing recorded by the judge has survived – the private suit heard by Gellius and described at this chapter's opening. The available sources must therefore be squeezed all the more for information. Even after such efforts, we must accept with resignation that sizeable gaps in our knowledge persist, some of which leave us entirely ignorant of features that are of central importance to understanding the Roman judge.

* * *

This chapter considers four main topics. As a foundation for discussion I briefly survey the types of judges that existed in Rome's legal system. This is necessarily simplistic but also very helpful for providing a sense of the circumstances that placed a given individual or group in charge of a case, and the possible connection or lack thereof between the judge(s) and the litigants. Next, I examine the qualifications, selection process, and identity of judges, who are divided into two groups: those who were listed on the *album iudicum*, the list of judges, and those selected directly by the litigants or appointed by other methods. This chapter leaves aside the preliminary hearings held before magistrates in both public and private procedures. The courts of the praetors have already been thoroughly considered; the courts of the emperor, *praefectus urbi*, and consul have also received attention and little more can be done with the available evidence. The focus here is on those who served as a *unus iudex*, single judge, in the *apud iudicem* stage of private cases and those who served on panels of judges in the standing criminal courts, the *quaestiones perpetuae*, and in private cases, namely the *recuperatores* and the *centumviri*. We then shift our perspective to that of a judge himself, considering how the status, education, and origin of a judge affected his ability to judge and the pressures he felt in the role. Finally, we place judges within the courtroom itself and look at how they interacted with the other courtroom participants.

The focus of this book is the courtroom itself and in this chapter we are interested in the judge as a participant. Thus, this chapter will not dwell on the steps in the process of a case from initiation to resolution, or on the specific jurisdictions of the various judges within the city. These complicated topics are the source of current research and debate.¹

An overview of judges at Rome

A case could go before a panel of judges or a single judge. To a certain degree, the nature of the dispute or crime determined which was appropriate. For some sorts of cases the legal system determined the type of judge. For other cases the litigants could choose between types of single judges or even between a single judge and a panel. This degree of variation is partially a product of the early imperial period. The courts of the republican system for the most part continued to function; however, at the same time the new courts of the emperor and the *praefectus urbi* were developing, which caused some overlap of jurisdictions. The status of the litigants could also affect which type of judge would hear a case. The following section lays out the judges found in Rome according to whether they judged as a panel or alone.

Judges as members of panels

We are woefully uninformed about judges who heard cases as members of panels. We know that *recuperatores* heard cases as panels of three or five individuals. Which types of cases went before *recuperatores* is not certain, although it appears their jurisdiction included both some private and some public matters. These cases possibly were especially urgent or included singular threats of violence.² Another group for which almost no information is available is the *centumviri*. In Chapter Two the physical organization of this court was discussed in some detail. While we know that these judges, 180 in total, could hear cases as four courts of 45 each or together as one court, we have little information as to how these judges were chosen in the republican period, and no idea if the same method continued to be used in the imperial period.³ The panels of judges of which we are least ill-informed are those that heard cases in the *quaestiones perpetuae*, the standing public courts. Each standing court dealt with a specific crime (e.g. murder, adultery) or group of crimes and utilized a sizeable panel of judges who rendered a verdict by a majority vote; they did not set the penalty, which was set by law according to the nature of the crime. Judges were chosen for the specific cases from a general list of prospective judges, the *album iudicum*, which consisted of men who met certain moral and financial qualifications. The list and these judges will receive greater attention later in this chapter.

The final panel of judges in Rome was the senate. As mentioned in the introduction, the senate stands as unique in Rome's legal system, and thus has been excluded from this study.⁴

Individual judges

Many of Rome's magistrates had a judicial function attached to their office and thus could judge cases of varied types as single judges. Even such minor offices as the *tresviri capitales*, or the *decemviri stlitibus indicandis*, two of the

boards within the group known collectively as the *Vigintiviri*, may have had judicial powers.⁵ With the beginning of the imperial period new magistrates appeared who also had judicial duties. The *praefectus urbi* came to have an extensive judicial function, as did the *praefectus praetorio*, though it seems to have developed later.⁶ The emperor himself, while not a magistrate, began to hear cases *extra ordinem*, a new procedure of the imperial period.⁷

By far the most commonly found single judge is the *unus iudex*.⁸ The majority of Rome's legal disputes went before a *unus iudex*, and it is also probable that the majority of these cases were financial in nature.⁹ Chosen in a variety of ways that are considered below, the *unus iudex* was provided with a formula (a document which set out the point at issue in that specific case) by the magistrate within whose jurisdiction he was appointed. He then applied this formula to the dispute placed before him. His job was to listen to the evidence and decide which side fit the terms of the formula better, thereby passing judgment. He did not determine punishment, which was set in the formula itself. One other group of single judges existed, similar to the *unus iudex* except in method of appointment. These were individuals who heard cases as direct representatives of the emperor or of magistrates, all of whom judged cases *extra ordinem*.¹⁰

Album iudicum

It is certain that the two laws introduced by Augustus in approximately 17 BC, known collectively as the *leges Iuliae iudiciorum publicorum et privatorum* (Julian Laws Concerning Public and Private Proceedings) laid out the particulars for the organization and functioning of the *album iudicum*, the list of judges.¹¹ Likely these laws also attempted to regularize the system, ironing out some of the idiosyncrasies of the late republican era. Unfortunately, not even portions of the actual texts of these laws have survived and we are dependent on indirect, often offhand, comments about their contents. Without these laws, our understanding of the structure and functioning of the *album iudicum* in the imperial period is limited, though we do know of some elements that were likely to have been included within the *leges Iuliae*.

To qualify for the *album* an individual had to be male, a citizen, and between 25 and 60 years of age.¹² Until the reign of Gaius, all members had to be from within Italy; Gaius apparently opened the *album* to those from the provinces.¹³ Individuals did not need to have any legal training, but were required to have substantial wealth. Following Augustus' reforms, men who met one of three property qualifications could be admitted to the *album*: the senatorial census amount of 1,000,000 sesterces; the equestrian rate of 400,000; or 200,000, the possessors of which were termed the *ducenarii*.¹⁴ A man could not be on the *album* if he had been condemned in a *quaestio* or a *iudicium publicum*, or had been ejected from the senate.¹⁵

Meeting the above criteria did not guarantee inclusion. A man had also to pass a character examination. Unfortunately, we are extremely ill-informed

about the specifics of this process. In the republican period and the early part of Augustus' reign, the examination of those eligible for equestrian standing was performed by the censor.¹⁶ Augustus subsequently took over this task, and his successors continued the practice as the censorial duties came to be subsumed within the jurisdiction of the emperor. The emperor approved men of this standing for the equestrian *decuriae* as well.¹⁷ As for the *ducenarii*, it is likely that they were examined by the *praetor urbanus*.¹⁸ This expectation that possible candidates meet a certain moral standing explains the exclusion of those who had been condemned in a *quaestio* or a *iudicium publicum*.¹⁹ Although the decuries serving in any given year were rotated, it appears that character and financial reviews of the equestrian membership were not done consistently and rather depended on the diligence of the emperor.²⁰ Regarding the *ducenarii*, the praetors were perhaps more vigilant.

Exemption from service on the *album* was possible. An individual could be excused if he had the *ius trium liberorum* – the right of three children.²¹ Magistrates apparently were not automatically exempt. A senate decree of 11 BC suggests that, for at least some relatively minor magistrates, exemption was possible for the portion of the year, in these cases three months, during which they were actively serving.²² Regarding the more important magistrates, the only evidence states that a praetor cannot compel other praetors or consuls to serve as a judge, because their authority is equal to or greater than his.²³ Since the magistracies exempted by the senate decree are of rather minor importance, it seems a safe assumption that for those magistrates who served actively throughout the year exemption would also be granted if requested. Many officials, such as the praetors, undertook heavy judicial functions within their office, so to require them to stand on the *album* as well seems extreme and also would have greatly reduced the efficiency of their own office, creating delays whenever the magistrate was called upon to serve. Surely exemption would also of necessity have been granted to those ex-officials who were serving as military commanders, *legati*, or governors.²⁴

The organization and size of the *album* was not static during the early imperial period. Initially, men of senatorial and equestrian rank made up the *album*, which consisted of three *decuriae*, (decuries).²⁵ Through Augustus' reforms the *ducenarii* were incorporated within a newly created fourth decury.²⁶ Still inadequate to meet the demand, the *album* had a fifth decury added, though it is uncertain whether this one also consisted solely of *ducenarii*.²⁷ The number of men in each decury apparently fluctuated. Pliny the Elder states that "*vixque singula milia*", "scarcely one thousand" men were found in each of the four decuries of Augustus' day.²⁸ The total number per decury dropped to lower still during Tiberius' reign since, according to Suetonius, he did not fill any of the equestrian vacancies during the last years of his reign.²⁹ It is only with Gaius' inclusion of provincials that the number rose above 1,000, though Pliny does not give the new average number.

At any given time, then, approximately 5,000 men were assigned to the *album iudicium*. And yet little is heard of these individuals within the literary sources. Fortunately, over 100 inscriptions identify men, most of equestrian status but some *ducenarii* as well, who were connected to the decuries. These inscriptions range widely in both geographic origin and date.³⁰

Unfortunately, the collection poses two interpretive problems. First, not a single inscription identifies a senator who served on the decuries. Second, the varied terminology found within the inscriptions is poorly understood by modern scholars, and literary texts offer little help. The main groupings of terms identify men, with slight variations of each phrase, as “*iudex ex V decuriis*”, “*iudex adlectus in V decuriis*”, “*iudex selectus ex V decuriis*”, and “*iudex ex selectis adlectus*”. Examination of the terminology suggests that no influences of time or geographical origin are at work. Rather, it appears certain that the varied terminology indicates differences between those within the decuries.³¹ Thus, there are three pressing questions: 1) were senators still serving as judges in the imperial period? 2) how do the terms associated with judges from the equestrians and *ducenarii* relate to each other? and 3) how does this terminology link to these men’s practical participation in the courts?

Modern scholars have suggested that in the imperial period senators were not judging cases as members of the decuries.³² However, if true then this leaves no explanation for Augustus’ requirement that no court session be held on the two set days of each month on which senate meetings were scheduled.³³ Clearly he saw attendance of senators at both to be important and took steps to guarantee it. Evidence suggests their involvement continued after Augustus’ death. Setting various honors for Germanicus, who died in the year 19, the *Tabula Hebana* twice refers to “*senatores et equites omnium decuriarum quae iudiciorum publicorum causa constitutae sunt erunt*”, “the senators and equestrians of all the decuries which have been or will be appointed for public cases”.³⁴ Almost 80 years later, the praetor Licinius Nepos fined a senator for not appearing at court.³⁵ Demougin suggests that over the course of the first century, as the senate came to hear more cases, senators quit participating in the decuries even though nothing officially released them from duty except custom.³⁶ While Pliny suggests Nepos is being more vigilant than other magistrates, he does not give the impression that Nepos had brushed off some dusty old rule and suddenly was requiring people to attend who had not been involved in the courts for decades. The evidence points to the continued involvement of senators as judges in the imperial period, though their total number no doubt was small when compared to the participating equestrians.³⁷

The evidence relating to equestrian involvement, while ample in comparison to that for senatorial involvement, proves very difficult to interpret. The varied terminology mentioned above likely was specifically defined within the lost *leges Iuliae* since Pliny the Elder states that Augustus “organized the decuries”.³⁸ Pliny goes on to describe the decuries in such a confusing manner

that little can be gleaned because of our own restricted understanding. The same terminology also appears scattered through other literary texts. Horace once refers to “one from the selected judges”.³⁹ However, the manuscripts show a variation replacing “selected” with “elected”. Pliny the Elder, in another context, states that “forty-five elected men” are needed to sentence a man to exile, while Seneca the Younger, speaking generally about cases, uses the verb form connected to “elected” to refer to the judge.⁴⁰ Ovid twice refers to the “selected judge”.⁴¹ The emperor Claudius makes use of this terminology as well in his edict concerning citizenship and the Anaunians when he states that “some chosen men in the decuries at Rome are judging cases”. Again, unfortunately, there are textual problems and two readings, “*collecti*” and “*allecti*”, have been proposed.⁴²

Since the literary evidence is of little help, we must get what we can from the inscriptional evidence. Demougin proposes a categorization that best accommodates the existing evidence.⁴³ She groups the various terms into three main categories, in ascending hierarchical order. First are the *indices* who identify themselves as “*ex V dec*” or some close variation of that phrase.⁴⁴ Second are the *indices* who are *selecti* and third, the *indices* who are *electi*. Two additional categories indicate individuals who were placed into the above three categories by the emperor: those *indices* who identify themselves as “*in V dec adlecti*” and thus are in the first category but came to that position by the emperor’s appointment (“adlection”); and those *indices* who were “*adlecti inter selecti*”, and thus fall into the second category, also through imperial appointment. Demougin’s categorization conflicts with other scholars’ various theories.⁴⁵

The above terminology and categorization apply both for those of equestrian status and for *ducenarii*. In the inscriptional evidence, men appear who were *indices ex V dec* and *selecti* and yet were not equestrians.⁴⁶ This lack of distinction is not surprising since there appears to have been some generalization when referring to the decuries. Although they consisted of senators, equestrians, and *ducenarii*, the decuries came to be seen collectively as equestrian.⁴⁷

While Demougin’s categorization best fits the inscriptional evidence, it is not without problems. The separation of *selecti* and *electi* into two different groups is troubling, as the distinction seems slight. Also, if Demougin’s theory is correct, then of the 140 men linked to the five decuries, and of the 25 individuals within that number who are identified as *selecti*, only two actually judged cases; further, in these two inscriptions the term *electus* does not even appear – rather, the phrase “*indicavit*” (he judged) is used.⁴⁸ Perhaps it is better to put *selecti* and *electi* within the same category – of men who judged cases. When individuals were appointed as *selecti*, it is likely that not many more were chosen than were required to fulfill the needs of the *quaestiones* and other courts. There was therefore no need to spell out in the inscriptional announcement that the individual actually did hear cases; it was assumed that if he was one of the *selecti* he would be doing so. A passage of Ovid, stating that the purse of the *index selectus* lies open for a bribe, supports the linking of

the two terms. If a *selectus* were only a prospective judge who had not yet been specifically appointed to a case, bribing him would achieve nothing. As an equestrian who served in various legal roles, Ovid must have clearly understood the organization of the decuries. Surely, the obvious meaning of this passage should be accepted. As a result, of key importance for those commemorating their careers in inscriptions was that it be known they had made the cut, and had moved from general inclusion within the five decuries up to the *selecti* group.

How then to explain the use of “*electi*” by Pliny the Elder and Seneca the Younger? These remarks view the judge from another angle. They are not talking of those who *would be* judging the case but of those who *are* judging the case. It is a slight distinction, but then so is the distinction in linguistic terms between *selecti* and *electi*, which both tend to mean “chosen”. Then what do the inscriptions that include “*iudicavit*” (he judged) indicate? Perhaps these two men were pulled from the *album* to be single judges. This would have been a further honor and one worth mentioning separately.

The inscriptional evidence then provides the names of men who served on the decuries from the time of Augustus until the mid-third century.⁴⁹ The entire chronological spread is found among the examples from Italy, not surprising since Italians were always eligible. Since no emperors are mentioned among the inscriptions from Gaul, the dating of these is difficult. Burnand suggests, based on other datable features, a span from mid-first century to the second half of the second century.⁵⁰ Among the African inscriptions, the earliest dates to the reign of Vespasian and they run through to the latest example, which identifies the emperor Pertinax.⁵¹ The practice of adlection into the categories of *iudex ex V dec* or *iudex inter selectos* is not seen until the reign of Domitian and then continues to appear until the mid-third century.⁵² The latest datable inscription mentions the emperor Commodus and with that the evidence for the decuries virtually ceases.⁵³ Based on this and other evidence scholars conclude that by this time the *quaestiones perpetuae* had become obsolete, though nothing specific can be said about when that occurred, nor about whether the courts lapsed into disuse or were removed by legislation.

While the *quaestiones perpetuae* were located in Rome, judges who served on the decuries apparently came from across the empire. Both Seneca and Pliny remark how judges were summoned from distant places – Pliny specifically mentions Gades and the Pillars of Hercules in southern Spain – to hear cases of minor significance.⁵⁴ Since such cases were heard by *ducenarii* it appears that even judges of the lowest monetary standing came from afar to judge. Men who originated in the western provinces of the empire, namely, Spain, Mauretania, Numidia, Africa, Gaul, Sardinia, and Sicily, indicate their involvement.⁵⁵ To the east of Italy, Pannonia, Asia, Bithynia and Pontus, and Lycia and Pamphylia produced members of the decuries.⁵⁶ The more eastern provinces of the empire appear not to have supplied any men. The increased

degree of Romanization in the more western provinces, especially with regards to the Latin language, no doubt is a factor in the geographical distribution of the judges. While they came from across the empire, calculations show that 45 percent of the known members of the decuries still came from Italy.⁵⁷ Within Italy, men came from every region, with the greatest number deriving from the three regions of Etruria, Liguria, and Transpadana.⁵⁸ Men even appear from such small communities as that of the Anaunians, which was linked with the larger town of Tridentum located in the far north of Italy.⁵⁹ However, care must be taken not to read too much into the inscriptional evidence. Archaeological excavation is scant at best, and the survival of inscriptions reliant on so many factors, that what we have may provide a somewhat skewed picture.

Comparison of the inscriptions by terminology and geography produces interesting results. Of the 35 *indices* identified in Africa, 34 were *adlecti*, while in Italy, of the 47 only 3 were *adlecti*. If one looks at *selecti*, of the same 35 in Africa only 2 were *selecti*; in Italy, the number was 15. From the surviving evidence, Africa appears to have produced the most *adlecti*, while Italy produced the most *selecti*. The high number of adlected Africans suggests an aggressive effort on the part of the emperor to incorporate Africans into the Roman establishment through inclusion on the decuries.⁶⁰ The high number of *selecti* found in Italy suggests that even though provincials could be *indices ex V dec*, Italians dominated the *selecti* category.

Can this evidence regarding terminology, chronology, and geography be amalgamated to form a practical working system for the decuries? Clearly the terminology is consistent and examples of each category are found across the empire. The most troublesome and of course most intriguing question is then, were all these people linked to the decuries in Rome, some from locations weeks away from the city, actually physically going to Rome to hear cases?

Demougín proposes that all who are connected to the decuries in the inscriptions, no matter what category (except those in the decury that was on holiday that year) were expected to travel to Rome at the beginning of the year.⁶¹ Upon arrival they went through the censorial examination by the emperor, or the praetor if they were *ducenarii*, at which point some were rejected and others excused. As a result, it appears that some men could travel all the way to Rome and then discover that they would not be put on the list.

According to Demougín's categorization, those who passed the censorial exam and were put on the list became *selecti*. What is the practical result of this? Did all *selecti* then stay in Rome for that year? They must have. If the number chosen to be *selecti* was near to the projected number needed to manage the caseload, and we can assume that every effort was made to require the smallest number to remain, then it is very likely that most *selecti* were almost always serving as judges. If a case finished, and a judge became available, the window before being chosen for another case would likely have been short, making travel impossible. For those from outside Italy, and

even from outside the immediate environs of Rome, being one of the *selecti* was a major commitment.

Demougin acknowledges the extreme results her proposal necessitates. In subsequent discussion of the decuries she states that it was permissible for *iudices* not to show up in Rome for the beginning of the year examination and thus not be considered for inclusion among the *selecti*, a type of self-selection process. The higher number of *selecti* found in Italy may support this argument; those who were not so far from home were willing to travel to Rome and be considered, while those from across the Mediterranean refused to travel the great distance. However, Pliny, Seneca, and others tell us that men from the provinces were hearing cases. Was there an element of volunteerism in this process, whereby if a provincial wanted to make the journey to Rome and attempt to be put on the list of *selecti*, he was welcome? This seems unrealistic. Surely, Augustus would not have endorsed a system that did not guarantee an adequate number of potential judges presenting themselves for the selection process.

This brings to the forefront a further problem with Demougin's categorization. She identifies those who were not chosen as *selecti* as being within the group of *iudices ex V dec*, but how did one become a member of this group in the first place? The decuries were made up of senators, equestrians, and *ducenarii*. For the imperial period there were at least 4,000 men in the decuries. Of this number, at most 600 were senators. The fourth decury, and perhaps the fifth as well, consisted of *ducenarii*, which leaves space for at least 2,400 equestrians. How many equestrians were there at this time? Answering such demographic questions is extremely difficult. It appears that in the early Julio-Claudian period the number of equestrians was going down, since in 38 Gaius, in an effort to boost the number of equestrians, enrolled men from the provinces who held the property qualification, and at the same time opened the decuries to provincials as well. All equestrians surely did not automatically become *iudices ex V dec*, as there must have been more than 2,400 equestrians within the empire. So how did one move into this group? Adlection resulted in the inclusion of several within the *iudices ex V dec*. Whether these men, *iudices ex V dec adlecti*, felt more or less inclined than the other *iudices ex V dec* to make the journey to Rome at the beginning of the year cannot be ascertained. There is no evidence that adlection to the decuries was merely honorific. As for the rest of the *iudices ex V dec*, nothing can be concluded with certainty.

From the literary texts we can identify two men, Ovid and Aulus Gellius, separated by over a hundred years, who were on the *album iudicum*. It is most unfortunate that neither mentions the category to which he belonged. Ovid's involvement appears to have been as a *unus iudex*, a task for which he was chosen repeatedly. In Book Two of the *Tristia* he states:

*Res quoque privatas statui sine crimine iudex,
Deque mea fassa est pars quoque victa fide.*

Also as judge I decided private cases without reproach,
And even the losing side conceded my good faith.⁶²

While this passage does not specifically mention the *album*, coupled with other of his statements the evidence seems strong. Even though Ovid shunned a public career for poetry he did undertake some public offices and functions, all of which were very legal in nature and suitable for someone of equestrian status. Ovid tells us that he held the position of *tresvir* and *decemvir stlitibus iudicandis*.⁶³ The legal nature of *decemvir* may suggest that Ovid served as a *tresvir capitales*, which was the office within the board of *Tresviri* most legal in nature. In addition to these posts Ovid acted as one of the *centumviri*.⁶⁴ As far as is known, Ovid is the only judge of that court who can be identified. Since Ovid includes his participation as a *centumvir* and *iudex* as evidence for his good standing as an equestrian before his exile, it is very likely that his service as a *iudex* hearing *res privata* (civil cases) stemmed from his inclusion on the *album iudicum*.

We know of another who served the same role. Aulus Gellius states he had been "chosen by the praetors to judge the cases which are called 'private'".⁶⁵ He then provides a detailed description of a dispute he heard as a single judge. Gellius likely also was of equestrian status.⁶⁶ Thus, we find here two judges who served as single judges (Ovid clearly heard more than one case, but for Aulus we hear only of his first case) drawn from the *album iudicum*.

Very little is known about the methods by which *selecti* were chosen from the *album iudicum* to be either single or panel judges. As each *quaestio* was established by its own law, it appears that a variety of methods also existed for the selection of the panel.⁶⁷ For the imperial period, the loss of the *leges Iuliae* seems the main cause of our ignorance. Surviving legal texts refer to the procedure for the selection of *recuperatores* as laid out in the *lex Iulia de privatis iudiciis*, which suggests that the same law may have laid out the selection process for single judges while its sister law, which dealt with public procedure, may have done the same for judges for the *quaestiones*.⁶⁸ The most likely scenario envisions procedures that included elements of both selection by lot (*sortitio*) and specific rejection by the litigants (*relectio*). Roman doctrine wished to provide all litigants with the opportunity to play some direct role in choosing their judges.⁶⁹ When choosing a *unus iudex* from the *album*, the two litigants began by taking turns rejecting decuries until only one was left, then they took turns rejecting individuals within the remaining decury until one judge was left, allowing the defendant (if it were such a case) final rejection.⁷⁰ The formulation of a panel of judges for a *quaestio* involved *sortitio* before the *relectio*.⁷¹ An initial larger group of judges was drawn from the *selecti* by *sortitio*, a certain number coming from each decury, and then the litigants, by means of *relectio*, reduced the number to the final panel.⁷² The typical number of judges for a public trial is unknown. Pliny the Elder mentions that a judgment of exile can be inflicted by a panel of "XLV electis viris", "45 selected men".⁷³ This

is the only evidence of imperial date for panel size. Late republican evidence suggests a standard size of 75, though smaller panels are also mentioned.⁷⁴ It is likely that the *leges Iuliae* dealt with panel size and possibly set a standard for all the *quaestiones*.⁷⁵ Also, since the ancient sources provide an overall sense that the press of judicial activity was ever-growing in Rome, it would seem to have been practical on Augustus' part to set the panel size at a number smaller than what had commonly been found previously. Fewer judges per trial increased the number of trials that could run consecutively. Therefore, it is possible that Pliny's 45 men constituted the standard size of all panels hearing public cases and that this size dated back to Augustus' laws.

Additional details regarding the selection of a single judge from the *album* are provided by Aulus Gellius:

*Quo primum tempore a praetoribus lectus in
iudices sum, ut iudicia quae appellantur
"privata" susciperem ...*

At that time when I was first chosen by the
praetors to be one of the judges so that I might
judge those cases which are called "private"⁷⁶

If Demougin's categorization is followed, this passage must be interpreted to mean that the *selecti* (those who passed the praetor's character examination) were sub-divided further into at least two groups, those to hear public and those to hear private cases (which would fit nicely with the titles of Augustus' missing *leges Iuliae*) and that the praetors had some role in determining these lists. Augustus determined that the *ducenarii* were to hear only cases of lesser importance, which no doubt refers to private cases, so we can assume that all the *ducenarii* who had become *selecti* were placed on this sub-list. However, Aulus Gellius, who was likely an equestrian, appears on this list. While the *ducenarii* were excluded from hearing the more important public cases, nothing forbade an equestrian from hearing cases that were private in nature, some of which would have been of large financial consequence.⁷⁷ Since the praetors both carried out the examination of the *ducenarii* and presided over most of the courts in which the *selecti* would serve, it is possible that they also were involved in choosing those equestrians, already approved by the emperor's examination, who would be assigned to hear private cases as single judges instead of hearing public cases with their fellow equestrians and senators. It is also of note that Aulus Gellius describes this occasion as the "first" time he was chosen, suggesting that his inclusion on this sub-list was not constant but that he was chosen subsequently at least one more time. Ovid's judgment of private cases while an equestrian suggests that he too was appointed to this sub-list, if this organizational method was in place so soon after Augustus' reforms.⁷⁸

Unus iudex

The qualifications for a *unus iudex* differ from those for the *album*. This is likely due to the nature of the selection, in that if the two litigants agreed on an individual, the state saw little reason to interfere. The judge had to be male.⁷⁹ The minimum acceptable age was 20; if the prospective judge was between 20 and 25, however, he could not be compelled to accept the role, even if he could not claim a valid excuse.⁸⁰ No information indicates a maximum age. Non-citizens as well as citizens could judge, but slaves could not.⁸¹ One did not need to be *sui iuris*.⁸² The role was not restricted to those living in Italy, there were no wealth restrictions of any kind and, again, no legal training was required.

A prospective single judge could be excused under certain circumstances.⁸³ As was the case for prospective members of the decuries, the single judge would be excused if he had the *ius trium liberorum*.⁸⁴ Ill health of a more lasting sort, something that clearly would make any civil duty impossible, was a valid excuse. Those who held certain priesthoods were also excused.⁸⁵

A simple process was used to select a *unus iudex*. The two litigants proposed men until one was found upon whom they could agree. If this agreed-upon man was eligible, the magistrate under whose jurisdiction the case was being heard appointed him judge. This method suggests that the parties knew their selected judge, though this knowledge could be intimate due to a common friendship with the judge or merely general knowledge gleaned about a popular public figure with whom they had had no prior contact. If they could not find a person to agree upon, they then turned to the *album* and the procedure already described.

The amount of litigation generated in Rome with its size and diversity, and the rather minimal qualifications demanded of a prospective single judge, lead to the conclusion that many men must have served as single judges. Certainly, some undertook the task more often than others. Being on the *album* no doubt greatly increased the chance of a man being requested as a single judge. Holding a magistracy with a judicial function also guaranteed participation as a single judge, though in that situation the magistrate judged a specific case because it fell within his jurisdiction, rather than because he had been chosen by the litigants. However, even among the general population, for such a legal system to function effectively, many must have undertaken the role at least once.

Thus, paradoxically, the fact that very few single judges can be identified is perhaps proof of just how ubiquitous such an activity was, so common that to mention one's participation was superfluous. While many men who held magistracies with judicial functions have been identified through both literary and epigraphic sources, rarely do any details of their judicial activities come to light. Even Pliny, never one to miss a chance to mention his more honorable activities, makes only passing comment of his judicial work while

he served as the *praefectus Aerari Saturni* and the *curator alvei Tiberis*.⁸⁶ On only one occasion do we find a known magistrate in his court dispensing justice. Fronto was called one evening to represent his client before Marcius Turbo – a military general of great renown during Trajan's reign, and subsequently made *praefectus praetorio* by Hadrian – who was holding court late into the evening.⁸⁷ Even regarding emperors, we have merely some anecdotal accounts of their legal activities in this study's time period, and the absence of details is frustrating.⁸⁸

As for private citizens acting as judges, very few can be identified.⁸⁹ Pliny is the only individual, in fact, whom we can confidently name as having been asked by litigants to judge matters as a *unus iudex* while a private citizen. Certainly we must view his involvement as representative of other men of similar status and background. Comments by Pliny himself suggest that his participation extended over quite some time. He mentions in two letters, one dated to the early 90s and the other to approximately 106, that serving as a judge was something he did often.⁹⁰ These letters thus imply that Pliny was involved in this type of activity throughout his public career. His judging took several forms. In one instance, Asudius Curianus asked Pliny to hold an inquiry into whether he had been properly disinherited by his mother.⁹¹ This proceeded as a domestic hearing, *consilium*, in which Pliny held no official position but rather gave a judgment solely based on the authority granted him by the disinherited son. In other circumstances, Pliny uses the term *iudex*, or a form of the related verb, *iudicare*, which suggests his participation as a *unus iudex*.⁹² This passage is of further interest in that Pliny is at his Tifernum estate when he writes that people pursue him even there for his judicial opinions. A judge's activities could even extend beyond the city.

While Pliny is our only example of a private citizen sought out by litigants to be a *unus iudex*, we hear of other single judges who were appointed by the emperor or magistrates to hear cases. In the imperial period, some magistrates were empowered to delegate their judicial authority to representatives who would hear cases on their behalf by the *extra ordinem* procedure. The emperor also had this ability. This system greatly increased the amount of legal business that could be carried on at the same time under one official's jurisdiction.⁹³ Seneca the Younger identifies Maecenas, one of Augustus' main advisors, as a regularly appearing judge.⁹⁴ While he may have been frequently requested by individuals as a *unus iudex* because of his very public role in society at the time, it is also possible (though no hard evidence is available) that Maecenas was hearing cases as a delegate of Augustus. Marcus Silanus also possibly acted as a judge under the emperor's jurisdiction. According to Cassius Dio, Tiberius refused to hear cases that were appealed to him from Silanus, perhaps because he himself had appointed him.⁹⁵ At a later date, Pliny mentions two judges who were hearing legal issues as the emperor's representatives. Before Trajan a woman laid charges of poisoning against two freedmen of her deceased son.⁹⁶ The case was complicated by a procedural

issue and it appears that Trajan first sent this issue to be judged by Julius Servianus who, not being identifiable as holding an official post, perhaps was one of Trajan's delegates.⁹⁷ Later, after the procedural issue had been ruled upon and the case had been tried (possibly in the appropriate *quaestio*), the emperor sent the case to Attius Suburanus, perhaps to deal with another procedural issue.⁹⁸ Consuls also appointed judicial delegates; Aulus Gellius tells us that he was appointed by the consuls as a *iudex extra ordinem*.⁹⁹ Unfortunately Gellius focuses his subsequent discussion on a procedural issue, leaving the nature of the case a mystery. All that can be known is that a decision was expected from him within at the most one month.

Who was a good *unus iudex*? Although very few single judges can be identified, some characteristics can be gleaned both from information about the individuals known to have served and from general comments made in the ancient sources on the "good judge". In the literary texts, a defining feature of what it means to be a "good man" is the ability to judge cases well. Horace sees the good man as one by whose "judgment many important suits are decided".¹⁰⁰ Juvenal calls on the good man to be a "judge of integrity", while Quintilian believes the good man will improve the state by his judgments.¹⁰¹ Judicial involvement was certainly seen by Quintilian as merely one aspect of the well-rounded man; however, this inclusion is noteworthy.

Of course, the "good man" cannot be separated from the great politician. Pliny and Ovid provide the typical senatorial and equestrian examples of the single judge. They both had legal experience early in their careers. Following Pliny's political ascendancy, his continued involvement in the courts as an advocate in many celebrated cases guaranteed his reputation as an able legal mind. Ovid, having turned away from the senatorial path, continued to fulfil the duties of an equestrian on the *album iudicum*. The importance of a legal reputation must be stressed. No doubt, both of these men, because of their exposure in various legal positions, were seen by litigants as excellent prospective judges. Those looking through the *album iudicum* would have paused at Ovid's name if they had heard of his previous involvement as a *tresvir*, *decemvir*, or *centumvir*. Here was someone the litigants could respect, and trust to have at least some understanding of the law. The same holds for Pliny, who had held several legal posts, had prosecuted *repetundae* cases for the state, and had been consul. As we have seen, his reputation even followed him to his country estates, where litigants also wanted their disputes judged by knowledgeable men. "A good man", however, is a relative term, and for litigants from the lower classes the opportunity, or even the desire, to have someone of Pliny's or Ovid's status and reputation judge the case may not have existed.

The stress of judging

Thus far our focus has been the structure of the legal system in reference to judges and the identity of those who served in this important function. This

section adopts a different perspective, that of a judge himself; every effort is made to view the court process through the eyes of a judge. The first topic to be discussed is the amount of stress a judge felt when fulfilling his duty. Subsequent discussion considers the factors that affected his decision and whether he saw his appointment as a duty or an honor.

The amount of stress a judge felt when undertaking a case naturally depended on both his personality (in particular, how much he wanted to do a good job) and his abilities. Acting as a single judge must have been more stressful since serving on a panel of judges gave each member a certain degree of anonymity and disconnectedness. As a panel member, he was required to listen to the evidence and vote; in that setting someone else, usually a magistrate or his delegate, presided over the case. For the single judge, the procedural issues, though few in comparison to those of the modern western court, could be worrisome as it appears that failure to appropriately enact procedure, or acting in some inappropriate way, could result in penalties for the judge.¹⁰²

The extent to which the judges of Rome were educated varied widely and could strongly affect how comfortable a judge felt in the courtroom. Certainly, in the decuries it can be assumed that those of old senatorial and equestrian families, due to their inherited wealth and position, all met a relatively high standard of education. Many no doubt even had rhetorical training and possibly some specific legal training.¹⁰³ But it cannot be assumed that all equestrians in the decuries attained the same level of education. The Julio-Claudian period, especially the reign of Augustus, saw the creation of many new equestrians and their increased participation within the bureaucracy. These men were rising in status and position, and very probably some had not attained the education that was common to the older families of similar standing. The education level among the *ducenarii* likely was still lower, since their overall wealth was half that of the equestrians. Furthermore, their recent addition to the decuries had only just opened this avenue of advancement to them.

Quintilian's greatest frustration with judges is reserved for those who are ill-educated.¹⁰⁴ He also states that "*indicem rura plerumque in decurias mittant*", "the countryside often sends a judge into the decuries", implying such judges lacked education.¹⁰⁵ Newly created equestrians and *ducenarii* from within Italy who had become eligible for service only in Augustus' reign certainly would have looked green to seasoned advocates such as Quintilian. Greener still were the wealthy provincials who had been admitted to the decuries even more recently.¹⁰⁶ While there was a greater chance that those from the provinces would be less informed of Rome's legal system and laws, it was equally possible that an Italian from Nola might know far less about rhetorical devices than a provincial educated in Athens. Quintilian does not indicate which group betrayed their origins most, thereby perhaps allowing all to be labelled inexperienced. In one passage, however, Quintilian specifically separates the ill-educated from the rustic, which gives hope that at least some who came from larger urban centres within the empire were deemed capable.¹⁰⁷

Quintilian considers the lack of education among judges to be prevalent enough that he calls for the advocate to make allowances in his presentation to match the judge's capabilities. Advocates, he says, must lower and simplify their style or risk not being understood.¹⁰⁸ They must avoid, or at least explain, any obscure or technical words.¹⁰⁹ The Greek judge who knew no Latin and thus was removed from the decuries by Claudius may be the exception, but there is every possibility that for many judges Latin was, in fact, a second language, and thus that any overly specialized vocabulary would have been far more difficult for them to comprehend.¹¹⁰ Even if a judge is not entirely ill-educated, Quintilian sighs, advocates still must be careful because most judges will have no understanding of the finer arts like dialectic.¹¹¹

Quintilian is not alone in his exasperation at the level of judges' education. Seneca the Younger comments that cases in which the nature of the disputes requires the application of wisdom by a judge – for example, if he must attempt to discern the motive of a litigant – he should not be drawn by “*ex turba selectorum*”, “the mob of the *selecti*”.¹¹² Clearly Seneca did not hold the *selecti* in particularly high regard. Juvenal does not mention the decuries specifically, but reports that the advocate will on occasion be arguing his case before “*bubulco iudice*”, “cattledriver judges”.¹¹³

How well educated was the typical *unus iudex*? Since litigants could draw a single judge from the decuries, the above criticisms equally apply. Single judges not drawn from the decuries could be anyone the litigants agreed upon who met the criteria. If the litigants themselves were from the countryside or particularly uneducated, they might choose someone they knew who came from similar circumstances. In such cases a judge, by Quintilian's standards, would be rustic or ill-educated. That said, it appears even those of lower standing saw the advantage in seeking a judge of higher standing, especially one with some legal training, as illustrated by Pliny being sought out by locals when at his Tifernum estate.¹¹⁴ In Rome, aristocratic men actively involved in dispensing justice as magistrates, advocates, jurists, and judges likely developed reputations among the city's populace; litigants no doubt sought those viewed as good and fair judges to hear their cases. Early in his career, Pliny is already referring to the many times he had been advocate, judge, and assessor.¹¹⁵

How much of a social gap could exist between the litigants and the judge they approached cannot be determined. Being comfortable with the patronage system that encouraged connections between those of vastly different status, litigants of low status may have felt comfortable approaching a man of far higher rank to hear their case and, for that matter, the petitioned man may have agreed more readily, since the honor to be gained from judging could benefit him in other situations. While modern sentiments may lead to the assumption that litigants would have felt more comfortable asking someone of their status to hear their case, the actual comfort zone for litigants in Rome might have been far broader.

Even if they were relatively well-educated, the majority of judges, whether from the *decuries* or not, likely did not have courtroom experience, except perhaps as litigants. The number of cases being heard within the city guaranteed that men with legal and magisterial experience such as Pliny, or even his lesser counterparts, could not be everywhere acting as both counsel and judge. Unlike the modern judge who rises to the position by means of success and ability as an advocate for several years, Roman judges could come to the courtroom with no previous experience of hearing a case. A far better modern comparison can be drawn between the Roman judge and the modern juror.

Yet the Roman *unus index* would likely not have been as terrified as we, with our modern sensibilities, might think when contemplating being thrust before a courtroom as the person in charge, expected to understand the intricacies of the law. Comparable to how the modern system regards jurors, the Roman legal system did not expect a judge to have extensive legal knowledge. He was expected to rule on what he could understand, nothing more.¹¹⁶ Furthermore, when he heard a case under the formulary system much of the work had been done for him, in that the praetor had already laid out the dispute in the *formula* and the judge merely had to determine whether the facts pointed one way or the other; he did not have to determine motive or penalty – hence, Seneca’s belief that even the ill-educated could judge such cases.¹¹⁷ Magistrates and single judges appointed by the emperor were hearing cases that required their determination of motive and an appropriate penalty.¹¹⁸ But magistrates likely had more experience with such matters, and those who are known to have been appointed by the emperor tended to have extensive political backgrounds.

Since Rome’s legal system allowed for non-experts to serve as judges, why do Quintilian and others make so much of their deficiencies? Quintilian may have been stressing judges’ limitations to remind advocates in training that they were no longer preparing declamations for fellow students; they were in court, and the intellectual shortcomings of the judges required advocates to specifically tailor their speeches. However, the comments of Quintilian, Seneca, and Juvenal may also be a reaction to the transformation of the *decuries* in the first century. The *decuries* of the second half of the first century were not of the same Italian constitution as those of Cicero’s time, the glory days of the Roman courtroom. Augustus’ addition of the *ducenarii*, and Gaius’ of the provincials, no doubt altered the profile of the typical Roman judge. Gaius’ recruitment suggests he was hard pressed to make up for the shortfall induced by Tiberius’ failure in the final decade of his reign to fill vacancies in the *decuries*.¹¹⁹ Claudius’ subsequent removal of a Greek member of the *decuries* who did not even speak Latin suggests that Gaius may have been somewhat undiscerning.¹²⁰ Our ancient authors may here be again betraying their prejudice (something that will be further considered later, in the discussion of the professionalization of advocacy) against the efforts of both provincials, and even Italians from more remote areas of Italy, to participate in

the system of government in Rome, a prejudice only exacerbated by the likes of a non-Latin-speaking judge.

Notably, even though any appointed individual was deemed capable of rendering judgment, conscientious judges often sought aid in reaching a verdict. The most common form of aid was the *assessor* (advisor).¹²¹ Judges of all types, including magistrates and emperors, are found judging cases with assessors at their side.¹²² Those most often asked to serve as assessors were men of political and/or legal experience; emperors, consulars, jurists, and advocates are often found in this capacity.¹²³ For such men, requests to be an assessor could be frequent.¹²⁴ Assessors often were not strangers to the judges who requested their services, but rather had some sort of personal connection. Pliny speaks of Corellius, whom he asked to aid him at a hearing, as a friend, and Gellius uses the same term to describe some advocates he requests to aid him in a case.¹²⁵ Corellius as well as Frontinus (the other man Pliny asked to serve as an assessor for the same case) were both highly connected political figures during the Flavian period and had already reached far greater political heights than had Pliny.¹²⁶ Although Pliny does not state such a motive, one wonders if his request for their aid provided an opportunity for him to honor those better positioned than he, thereby strengthening his relationship with them.

The basic role of the assessor was to advise the judge. Gellius reports that assessors were particularly valuable for informing the judge on ancient points of law, or laws that were contested and ambiguous, or newly ratified.¹²⁷ When he asks for the advice of his assessors, however, Gellius is more concerned with moral issues and they merely encourage him to follow the clear letter of the law. But a judge was in no way obliged to follow the opinion of his advisors and, in the case he describes, Gellius in fact did not follow their advice.

Some other aids were available to judges, in the form of some written works. When he had first been chosen by the praetors to hear private cases, Gellius made an effort to prepare for his task by examining materials written in both Latin and Greek that discussed the duty of a judge; likely the Greek works dealt with moral philosophy.¹²⁸ He also turned to texts that provided information on procedure, a topic on which (as discussed above) many judges likely felt themselves inadequately informed. Gellius mentions that on the topic of postponements and delays he examined the *leges Iuliae*, and that he read the commentaries of various jurists who no doubt provided further explanation of important laws.¹²⁹ While he seems to find these readings generally useful, he remarks that for the case he subsequently judged they did not help. We must assume from the nature of the works Gellius mentions that a judge of less academic ability and interest would not have found these works readily accessible, either physically or intellectually.

Judges could also, though, be aided by visual tools provided by the advocates. Pliny remarks that in a complicated inheritance case he almost had to call for "*calculos tabulamque*", "counting tools and a board", articles which he implies were common in private cases.¹³⁰ As I have noted, financial issues

were likely prevalent among the cases heard under private law, which suggests that a judge could often count on at least some help from such tools if he were hearing such a case.¹³¹ We also hear of paintings of the crime and portraits of the deceased being presented in the courts.¹³² One does not get the impression that these were produced to aid a judge in understanding the legal issues, but were rather designed to appeal to his emotions.

The stress an individual felt as a judge was affected by many variables. The type of court certainly made a difference. As one of a panel, a judge would feel protected among the group; at the same time, the cases heard by the *quaestiones perpetuae* could result in exile or other serious penalties for those convicted – the stakes were higher, and that must have weighed on at least some of the judges. A panel judge's educational level probably made slight difference to the stress he felt. Various factors (which will be discussed further in the next section) brought individuals to the decuries and these likely overpowered any feelings of inadequacy among the judges. The panel was asked to rule on what they could understand, and in the end each judge's vote came down to his opinion of the case.

With regard to the *unus index* drawn either from the *album* or general population, we must avoid comparing him to his modern equivalent. In fact, the best modern equivalent would be a single modern jury member serving as the judge. A single judge chosen from the *album* and unfamiliar with either party likely had the best chance for a stress-free hearing. The matter would be of slight to moderate importance and no one would be going into exile, although certainly the matter was deemed important enough to the litigant who instigated the legal process. The judge had no vested interest in either party, nor did he care greatly about their opinions of him. He would make his decision as best he could, and move on. Perhaps we assume too much, since Gellius had problems even with a case of this sort; however, he struggled with something other than the facts of the case, namely, his own prejudice toward the individuals involved.

For the *unus index* asked to hear a dispute between two friends, the hearing clearly involved a level of stress. He would want to do what was in the best moral and legal interests of both parties. A judge with more legal training likely felt more comfortable interpreting the laws, and if he did not have a legal background, he sought out aid from those who did. In the end, however, a judge had to rely on the fact that his friends had chosen him and by that very act had concluded that whatever ruling he gave, whether or not based on proper interpretation of a complicated law, would in their opinions be adequate. The honor of being entrusted with the task must have given a judge some courage.

Favoritism in the rulings of the judge

Rome's legal system entrusted disputes to the judgment of men, none of whom had any specialized training to ensure the impartial application of the

law to all who approached his court. This layman's approach to justice meant that diverse forms of favoritism could influence a judge's rulings. For instance, connections based on friendships, even those that were not particularly intimate, could result in a judge favoring one of the parties from the very outset of the case.¹³³ Fronto's letter to Claudius Severus, who was to hear a case involving his friend Sulpicius Cornelianus, shows Fronto's attempt to influence Severus before the case had even begun.¹³⁴ Conversely, Quintilian mentions a judge who was already hostile to one side before the hearing began.¹³⁵ Such hostility could be due to various circumstances. The judge could, for example, be hearing a case in which his own personal interests were involved.¹³⁶ Quintilian does not elucidate the full range these "personal interests" could take (he mentions specifically only the case in which Queen Berenice was both the judge and a litigant in the case, which was made exceptional already by the involvement of foreign royalty); perhaps a more commonly found interest was some sort of financial connection between the judge and one of the litigants. In addition, a judge apparently could hear an appeal of a case for which he had provided the initial ruling.¹³⁷ Surely it would be difficult for a judge to remain impartial toward the party who had appealed his decision. Pre-existing hostility could also be aimed at an advocate.¹³⁸ It would have been nearly impossible for judge, litigants, and advocates always to be completely unknown to each other, if the case took place in a prominent court and involved equally prominent litigants and advocates. To a certain degree, such prejudices could not be helped. The other situations mentioned above, however, seem quite prejudicial to modern sensibilities, and yet none are described as being particularly rare in Rome's courts. A judge could excuse himself from a case if one of the two litigants stood in his higher opinion; surely he could do the same if he was financially linked to the case.¹³⁹ It appears, however, that no rule required his withdrawal. Quintilian notes, though, that sometimes the favor of a judge could actually do more harm than good. In an effort to look impartial sometimes a judge would actually be tougher on those he favored.¹⁴⁰

Favoritism due to the character or status of the litigant is rarely found in the ancient sources.¹⁴¹ The best evidence for the role character could play in a judge's decision is found in Gellius' description of a case he heard in his early years.¹⁴² In this case litigant A made a loan to B but did not use witnesses or obtain a receipt. A tries to get the loan repaid, B claims the loan was never made and therefore he owes nothing, and the matter comes before Gellius for resolution. Gellius describes A "*virum esse firme bonum notaeque et expertae fidei et vitae inculpatissimae*", "to be a steadfastly good man of well-known and tested trustworthiness and blameless life" and B "*hominem esse non bonae rei vitaque turpi et sordida*", "to be a man of ill-gotten gains and of a shameful and base life".¹⁴³ While the facts of the case leave little room for unease – a fact which his assessors make very clear to him – Gellius feels that he cannot find in favor of B because A is the "*melior*" (better) man, and finally takes the oath that he

cannot come to a decision.¹⁴⁴ This account is interesting for two reasons. First, the assessors were not at all affected by the character issue. Their primary concern was a quick resolution of the case. Second, the explanation Gellius provides for why he cannot rule in favor of A is unusual. He does not say that he just could not bring himself to it; rather, he says: “*maius ego altiusque id esse existimavi quam quod meae aetati et mediocritati conveniret, ut cognovisse et condemnasse de moribus, non de probationibus rei gestae viderer*”, “I thought that I would appear more proud and haughty than was appropriate because of my youth and humble station, if I seemed to sit in judgment on and condemn a man based on the characters of the disputants rather than on the evidence of the case.”¹⁴⁵ Gellius here implies that status and reputation, *auctoritas*, gained by years of public involvement, could empower a judge to rule against the letter of the law.

Influence impacted on practically every aspect of Roman life and clearly, as Gellius reveals, its impact was felt within the courts. For this study, however, the problem is identifying when outside forces of varying types affected a decision. The only reason we know Gellius’ decision was affected by the litigants’ characters is that he admits it. Without such admissions the impact is very difficult to spot. Garnsey is right that the praetors, as the magistrates who decided whether a prospective litigant had a viable case, could reject a case without any explanation. Thus, even at a preliminary stage character, influence, and status could determine access to justice.¹⁴⁶ Garnsey is also probably correct in seeing a greater opportunity for a judge to rule by status in the *cognitio* system. The individual judge under this procedure was given far more latitude in determining the penalty. To a certain degree, favoritism was a normal, acceptable aspect of Roman culture and for that reason its appearance within the courts likely did not surprise anyone. All things considered, however, a sense of impartiality was certainly viewed as a very favorable trait in a judge.¹⁴⁷

Judicial service: honor or duty?

For citizens of Rome, it was one’s duty to be willing to serve as a judge.¹⁴⁸ As with many features of Rome’s governmental system, however, the expansion of Rome into an empire greatly increased the demands on both the system and those who were expected to participate in it. Legal matters from across the empire were now streaming into Rome, demanding attention in addition to the normal judicial load created by an ever-growing population within Italy and Rome itself.

How did the Roman judge view his participation? Did he come to the courtroom with dragging feet, resentful of the days that would be lost to the case, or did he eagerly undertake the task, happy to contribute to the good government of the state? The above discussions have shown that judges came to the courtroom by various methods of selection and could find themselves

serving alone or on a panel. The method of appointment for a panel of judges, involving *relectio*, hardly made a man's selection particularly honorable and he was merely one of a large group within the courtroom. On the other hand, the selection process of the *unus index* brought more honor with appointment because a judge was singled out by the litigants and asked to hear the case. In addition, as the only judge in the courtroom, he received all the attention accorded to the role.¹⁴⁹ Furthermore, as we have seen, judges were very diverse in background, education, and status. All of these factors greatly affected how a judge viewed his participation.

More than any who served on the decuries, the senators likely viewed their participation as a duty. The strongest supporting evidence for this statement is that in all the inscriptions commemorating the achievements of individual senators, there is not a single mention that any one of them participated in the decuries. This service was apparently not seen as helpful to one's career, and in Pliny's letters we learn of the praetor Nepos fining a senator for not appearing in court. While it appears Nepos found only this one to fine, which suggests not many were skipping, Pliny does not say anything negative about the senator. Avoiding service on the decuries could be a powerful motive for obtaining the *ius trium liberorum*, a right Pliny himself secured at the beginning of Trajan's reign without producing the requisite children.¹⁵⁰ The fact that exemption from service was one of the perks of the grant suggests that even in the eyes of the state the service was seen as an onerous duty.

Among the equestrians, service on the decuries was viewed in different ways. Those of old money, Italian background, and an active career likely viewed service in the same light as the senators, a duty to be avoided if possible. During the Julio-Claudian period the number of official state positions open to equestrians was constantly increasing, which meant more could plead an excuse and avoid serving.

The men in these two groups, senators and equestrians of old family and great political ambitions, saw little to be gained and much to be lost from service in the decuries. If they did not have the *ius trium liberorum* and happened to have a year in their active career when they were not busy with some magistracy or post, they could find themselves stuck, with no excuse, among the *selecti*, and the year they had thought might be a bit of a break allowing for some travel to family estates away from Rome suddenly would have been restricted by constant duty to the courts. Even the opportunities to forge any useful political or even social connections were limited, since unless a man turned to illegal methods he would often be lost within the mass of a panel of judges.

The situation was slightly different for equestrians of old money and Italian background who were not actively seeking a political career. We must recognize that there surely were equestrians who did not have the tools (whether the family name or the necessary abilities, or both) to make a career for themselves, as well as others who, while able, chose not to pursue a career.¹⁵¹ There also might have been some equestrians who were in their

fifties or sixties and had finished their active careers but still wanted to be involved in some public role. The decuries could have provided all these men with an opportunity to make a contribution to the state. They could even spin it in a way to increase their importance – since their fellow senators and equestrians were busy with other duties all would be grateful that they were free and able to keep the courts functioning. For some, then, service in the decuries could mean a great deal for their reputation.

Men from Italy and the provinces who were newly made equestrians or met the financial criteria of the *ducenarii* saw far more honor in serving on the decuries. Only recently had the *ducenarii* and provincials gained admission to this role and they proudly listed their inclusion within commemorative inscriptions. There were also men who were anxious to be on the *album*, which suggests they saw it as an honorable role.¹⁵² Suetonius, for example, recounts that Livia repeatedly asked Tiberius to place a certain new citizen on the list.¹⁵³ The man whom Claudius removed for not being able to speak Latin is described as “*splendidum virum Graeciaeque provinciae principem, verum Latini sermonis ignarum*”, “an illustrious man, a leading citizen of the Greek province, but at the same time ignorant of the Latin language”.¹⁵⁴ He was likely of equestrian standing and although he did not speak Latin accepted the position presumably because of the value attached to the role.¹⁵⁵ And we hear of a man who had three children but did not apply for the exemption, continuing instead to serve.¹⁵⁶ This man found pleasure in his role either due to the honor attached to it or because of the opportunity it gave him to participate.

That the emperor was involved in selecting some members imbued the role with further honor – the direct approval of the emperor. This could take two forms. Inclusion within the *selecti* was a result of the emperor’s approval, since the emperor examined the senators and equestrians. Ovid, when discussing his service to the state and his abilities as an impartial judge, specifically draws attention to the fact that he underwent an equestrian examination and won Augustus’ approval.¹⁵⁷ The honor of such endorsement was not lost on the general public either. Horace’s father, when searching for good role models to put before the eyes of a young Horace, points to “*unum ex iudicibus selectis*”, “one of the *selecti*” as an example of an honorable citizen worthy of emulation.¹⁵⁸ Perhaps Horace and his father found this member of the *selecti* hearing a case as a single judge, having been chosen by the litigants from the *album*.¹⁵⁹ The honor Horace attributes to this man stems from his inclusion among this group, accomplished only by undergoing the character examination. The emperor also directly appointed men to the decuries, the *adlecti*. These men took great pride in being thus singled out. Nearly half of the relevant inscriptions commemorating men who were adlected also include the name of the responsible emperor. This honor would have been enhanced further if one was adlected into the more elite group of the *selecti*, rather than merely the *iudices ex V dec.*

For those politicians in Rome or at a municipal level who saw inclusion on the decuries as an honor, the nature of that honor was very much connected to when his enrolment occurred in the course of his career. For those newer equestrians actively working on their careers, especially those adlected into the decuries, inclusion on the *album* was a step from which they could propel themselves to higher offices if they had the skill and ambition.¹⁶⁰ For the *ducentarii*, as well, service on the decuries could lead to becoming an equestrian and attaining further offices.¹⁶¹ For members of the municipal elite who are found in the decuries, appointment came often at the pinnacle of their careers and appears to have been their crowning achievement.¹⁶² The decuries in this way served as a method by which imperial Rome could continue the Romanization of notable locals.¹⁶³ Service on the decuries, therefore, carried disparate meanings and provided very different opportunities for individuals who came from vastly dissimilar backgrounds and social standing.

For a *unus iudex*, the honor associated with the role also varied. It was clearly a great honor to be appointed by the emperor to hear criminal or civil cases as a single judge. Although such men, like Julius Servianus, were already closely connected to the emperor, to be a delegate of his judicial authority must have given them a still greater sense of pride and increased *auctoritas*. It appears that representing a magistrate as a single judge did not hold as much honor; beyond acknowledging that he was chosen to judge by the consuls, Gellius adds nothing more.¹⁶⁴ It is possible that by his day, the judicial workloads of some magistrates like the consul were such that many men were undertaking this function, thereby devaluing the honor derived from such service. Gellius gives little hint that his appointment as a single judge was an honor, apart from mentioning the selection process (rather than simply saying, "When I was judging a case ...").¹⁶⁵

For single judges who were chosen by the litigants, the greatest honor came from the request itself. The best judge, in the mind of the two disputing parties, was the "good man" – someone believed by the parties to be honorable, knowledgeable, and fair. By choosing a specific man the litigants were publicly advertising their belief that this individual met these criteria. His verdict also could affect the honor of his role; Quintilian advises the advocate to remind a judge of the glory to be won by his clemency.¹⁶⁶ Hardly a new idea to the Roman mind, Augustan propaganda made much of *clementia*, and Quintilian's belief that such a comment would warrant a reaction from a judge suggests that judges did consider the effect of the verdict on their own reputation.

The element of publicity warrants further comment. The public nature of Rome's courts and the impact such a location could have on the reputation of a single judge (and even upon those on a panel, though to a lesser degree) must not be forgotten. Sitting alone on a platform in one of the *fora*, hearing a case, the public milling around, some specifically there for the event and others merely passing by on their daily business, was no doubt very empowering. A judge's appointment by the litigants, or by the delegating official

who assigned him the case, was displayed for all to see. Emperors certainly realised the impact that the public dispensation of justice could have on their reputation and popularity, and many made efforts to dispense justice on occasion in public locations. The impact on the general reputation of a *unus iudex*, while on a much smaller scale, could still be relatively far-reaching.

While I have made the argument that for many judges service brought much honor but for others it was seen as more of a duty, another more practical factor must be considered – the amount of time that would be taken up with cases if one was placed among the *selecti*.

I suggested above that the emperor and praetors attempted to keep the number of *selecti* to the minimum required to meet the demands of the courts as projected from year to year. If that argument is accepted, then it follows that those serving would be in almost constant demand. The specific number required could vary slightly, of course, if it was a particularly busy year for the courts. However, the available evidence is consistent in suggesting that the number of cases was ever increasing as the empire continued to grow and develop.¹⁶⁷ The addition of decuries certainly suggests the system was strained and needed expansion; Augustus added a fourth and also lowered the minimum age.¹⁶⁸ By the time Gaius reviewed the decuries, after Tiberius' inaction, he saw the need to add the fifth decury to "*levior labor indicantibus*", "lighten the workload of those judging".¹⁶⁹ The pressure continued, however, and the overworked judges petitioned Galba to add another, only to be disappointed.¹⁷⁰

Their complaints stand in opposition to the argument made by some scholars that the *quaestiones perpetuae* began to fall into disuse within the first century because of the creation of new courts, namely the senate, the emperor and his delegates, the *praefectus urbi*, and still later that of the *praefectus praetorio*, all of whom heard cases that earlier would have gone to the *quaestiones perpetuae*.¹⁷¹ This argument cannot stand in light of the above evidence of the pressures felt by judges during this period, the continued identification of *indices* of all types in the inscriptional evidence into the early third century, and the comments of men such as Quintilian about arguing cases before such groups of judges. The creation of the new courts likely altered the face of the cases coming before the *quaestiones perpetuae* but did not in fact decrease their numbers. It certainly cannot be denied that literary evidence shows the cases of senators and others of great wealth were sent more often to the court of the senate or the emperor, and rarely mentions the standing courts.¹⁷² However, it is also clear that the amount of legal business coming to Rome as the empire became ever more Romanized was constantly increasing. The newly created courts then should be seen not as replacements for the standing courts but as additions, and while cases of certain types, such as those involving *maiestas* or individuals of high-standing, were diverted to these courts, the empty berths on the docket were quickly filled with the cases of a growing population. So it is likely that in the first century the status of the average litigants in the

quaestiones perpetuae dropped slightly, since those of higher status were pulled to the new courts and the number of cases from outside Rome and Italy had increased. Even with the removal of some types of cases from the *quaestiones perpetuae* there were no doubt still quite enough to keep judges of the first and second century busy. Appointments to the *quaestiones*, found in the epigraphical evidence, suggest that these courts continued to play some role (though perhaps progressively less and less) until at least the reign of Commodus.¹⁷³

Judges did receive holidays, though inevitably there arose the problem of balancing time off against the constant pressure of incoming disputes. Augustus, after adding the fourth decury, established a rotating exemption from service for one decury each year. He also added two months to the annual holidays of the courts already in place. Between the reigns of Augustus and Galba these annual holidays fluctuated between two and three months.¹⁷⁴ A large number of festival days dotting the entire calendar also entailed the closing of most courts. Thus, an equestrian who could not claim an excuse and who was of such moral fibre that he would always be chosen as one of the *selecti* could serve three years of every four, and during those three years he would get between two and three months off, as well as several additional weeks off for festivals, if the individual days were added together. The complaints for the addition of more decuries suggest that many of those serving felt this workload was too steady.

* * *

Some judges clearly did not find the honor of judging a case adequate recompense and instead sought a more tangible benefit: payment through bribery.¹⁷⁵ According to the law all judges were forbidden from accepting payment of any kind.¹⁷⁶ Yet evidence points to single judges, members of the decuries, and even judges in the rarely mentioned centumviral court accepting bribes.¹⁷⁷ Quintilian suggests that threatening judges with a charge of bribery is guaranteed to cast fear into them, saying that this is an effective method with a panel of judges since it pleases the honest and curbs the dishonest.¹⁷⁸ However, he recommends that this method be used only as a last resort before the single judge. Although he explains no further, it is clear that by making such a threat an advocate would suffer the most if the judge was in fact honest and took offence, whereas there was nothing left to endure from a corrupt judge who had already decided to rule against the advocate. Quintilian's comments show just how rampant bribery must have been.

Although some bribes are more specifically mentioned, we cannot determine who initiated the corruption – litigant or judge. We hear on one occasion of a judge who refused bribes – clearly he was not seeking them.¹⁷⁹ On the other hand, Ovid mentions a judge from the decuries who apparently was actively advertising his willingness to negotiate his decision.¹⁸⁰ Ovid identifies the judge as one of the *selecti* and we can assume, based on

our earlier conclusions concerning the terminology, that Ovid here describes a judge who, having been chosen for a specific case, is now making clear his willingness to be bought, and in a remarkably brazen fashion.

Various emperors made occasional efforts to stem the tide of corruption. Tiberius sat in various courts at random times, and if there were rumours of bribery playing a role in the decision of a particular court he would appear and lecture the judges on their duty.¹⁸¹ Domitian also took steps, going so far as to rescind verdicts of the centumviral court that were affected by bribery and resorting to placing a mark in the censor's book to indicate those single judges who had accepted bribes as well as those who had served as their assessors.¹⁸² It is unclear if the assessors accepted money too, but it appears Domitian suspected that they were at least aware of the agreement. Attempts were made to provide checks, but the clandestine nature of bribery made punishment very difficult. The expansion of the *cognitio extra ordinem* procedure, which gave individual judges far more leeway in reaching a decision, may in fact have made the practice even more frequent; the formulary procedure limited a judge to the confines of the facts of the case, and while there was some flexibility within those boundaries, in clear-cut cases he would be far more hard-pressed to explain his decision if it went against the evidence.

The judge in the courtroom

Now we are ready to follow the judge into the courtroom. Chosen by litigants, perhaps nervous and yet honored to undertake this role, he enters one of the physical environs we considered in Chapter Two. The most important duty of a judge within the courtroom was to give his attention to the case at hand, which required that he listen to the advocates and the witnesses. This must have required stamina and concentration, and Quintilian addresses the topic of maintaining the interest of a judge. Earlier, we noted Quintilian's advice that the advocate must pitch his speech to the intellectual level of a judge.¹⁸³ If the vocabulary or the style was overly complicated a judge would be unable to follow and would lose interest. Indeed, it appears that the judges' attention was not always very keen.¹⁸⁴ Quintilian provides several remedies, such as announcing that his comments will be brief, and even provides a trick of the trade to awaken a judge when he begins to nod, suggesting that the advocate specifically call upon the judges to give him their best attention at that moment.¹⁸⁵ Apparently even Claudius, portrayed by many ancient authors as an overly zealous judge, sometimes drifted off and could be woken only by the advocates' deliberately raised voices.¹⁸⁶ Yet we should not be too hard on the failure of some judges to remain alert. The advocates' speeches could run for several hours per day and if a judge struggled with the complexity of the speech (or the language, if he was not a native Latin speaker) he would have needed a great deal of energy.

In addition to the demands of following their cases, judges also clearly became emotionally involved. Quintilian discusses extensively how the advocate can best appeal to the emotions of a judge and thereby affect the outcome of his case. He admits that such a methodology may not be the most philosophically noble, since an advocate could detract from the truth by appealing to the emotions, yet he is practical enough to realise that advocates had to use the available tools, and emotional appeals were proven to work.¹⁸⁷ He in fact calls it a duty of the advocate to appeal to the judge's emotions.¹⁸⁸ In Chapter Seven we will consider how the advocate went about moving the emotions of a judge; here we are rather interested in how a judge reacted – was he emotionally moved during a case? Again, evidence is scarce. No journal survives in which a judge states that he was going to rule one way and then was moved by pity, anger, or hatred to rule the other way.

Still, it appears judges gave visible indications of their emotional states during the course of a case. Quintilian mentions that it is often possible to discover what remarks of the advocate a judge accepts or rejects by the “*vultu*” (looks) he gives, and sometimes by something he does or says, though Quintilian does not supply specifics.¹⁸⁹ Judges were at times brought to tears; on two occasions Quintilian speaks of tears as a reality rather than as a possibility, and views the tears as evidence of the advocate's successful emotional appeal.¹⁹⁰ It is very disappointing that these are the only visible indications of an emotional impact upon a judge that Quintilian mentions. The willingness of judges to cry before the public surely suggests that other emotional reactions, such as laughter, were at least equally frequent. We hear of one other emotional action on the part of a judge from Pliny the Younger, who states that frequently during his speeches the judges of the centumviral court would rise to their feet and praise him (either by applause or shouts of approval – he does not tell us).¹⁹¹ These visible signs of emotions suggest that judges made little effort to keep the success of the advocate's efforts hidden from view or to maintain a countenance of impartiality, disconnected from their sentiments.

It is certainly clear that judges verbally interacted with others in the courtroom during the case itself. The stage of the proceedings as well as the type of case no doubt greatly affected the amount of discussion. Gellius describes a brief conversation between an advocate and a praetor as it was recorded by Sulpicius Apollinaris in one of his *Letters*. The context likely places this exchange during the praetor's business day when he was dealing with *in iure* matters.

‘Omnia, vir clarissime, negotia de quibus te cogniturum esse hodie dixisti diligentia et velocitate tua profligata sunt, unum id solum relictum est, de quo, rogo, audias,’ tum praetor satis ridicule: ‘An illa negotia de quibus iam cognovisse me dicis profligata sint equidem

*nescio; hoc autem negotium quod in te incidit,
procul dubio, sive id audiam sive non audiam,
profligatum est.'*

'All the business, most excellent sir, which you said you would examine today, has been completed by means of your attentiveness and quickness; only one matter remains, which, I beg, you will hear,' then the praetor with suitable wit: 'Whether that business which you say that I have examined already has been completed, indeed, I know not. However, this business which you are involved in, has been ruined, without doubt, whether I hear it or not.'¹⁹²

While the praetor says little of consequence, this is one of a very few surviving direct quotations of what a judge said during his court day.¹⁹³ During the hearing itself, judges are known to have made statements and asked questions about points that were not mentioned by the advocate, as well as about points mentioned but unclear.¹⁹⁴ Perhaps more importantly, it appears there was debate among legal and philosophical circles whether such involvement of a judge was appropriate. By clarifying out loud some vague point, a judge was in a way helping one advocate make his case; by asking a question, he was notifying the advocate that he needed more information. Furthermore, it was believed that some judges who asked frequent questions and interrupted with remarks were doing so not to improve their understanding of the case but rather to display their own abilities to the audience. Interruptions were on occasion even more meanly intended. Judges who harboured hostility towards the speaking advocate are known to have interrupted to announce their own opinion or ask abrupt questions, presumably in an effort to discountenance the speaker.¹⁹⁵

For the most part, such interaction between a judge and the other participants at the legal hearing was restricted to verbal exchanges. The only occurrences of physical contact of which we are informed are an account of a female defendant being advised by her advocate to pour forth tears and put her hands on the knees of the judges, and a report that Claudius was often kept on the tribunal when trying to leave the courtroom by advocates clutching the edge of his robe or his foot.¹⁹⁶ The attempt to clutch the knees of a judge is also found in visual representations depicting individuals falling before the platform of a magistrate or emperor.¹⁹⁷ While it is not possible to determine whether these scenes are intended to represent the *in iure* stage of a case or the *apud iudicem* stage, it is clear that this was a common action of suppliants. Since the cited passages are the only surviving evidence of physical contact being made with a judge, we must assume that this was rare.

* * *

Serving as a judge within Rome's legal system was very inclusive, involving Roman citizen and foreigner, senator and freedman. Opportunities existed for many from highly diverse backgrounds and geographical origins to come to Rome and fulfill the task. Whether a man viewed judging a case as an honor or a duty depended greatly upon his placement within Rome's political hierarchy and his ambitions. For some, judicial service provided various opportunities. For others, it was a duty that came with their privileged position. For all who undertook the role, the task required a commitment of time that could range from a few hours to possibly weeks, as well as patience – the patience possibly to allow yet another postponement of the hearing, or to listen to another longwinded advocate work himself into a frenzied state over a seemingly trivial matter. Even though the judge was farther removed, emotionally, than the litigant, or perhaps even than the advocate, the courtroom was a highly charged environment and he must frequently have found his task draining. Advocates and litigants both attempted to manipulate the opinion of the judge through verbal, visual, and physical methods, and in addition, the judge no doubt dealt with his own preconceived expectations of his role. One can only hope that in the majority of cases the judge, having delivered his verdict, departed the now silent courtroom feeling he had given the best ruling he could.

THE AUDIENCE

The Roman courtroom was a strikingly fluid environment filled with noise and movement, and much of this atmosphere can be attributed to the activities of the audience. The various references describing the courtroom frequently mention the presence of an audience, which was an integral part of the environment. The public nature of cases not only fulfilled a legal tenet, but also served various cultural functions, ranging from social and political advancement to cheap thrills and entertainment. At one extreme, a courtroom provided a platform for up-and-coming statesmen. Here young men hoping to make a career for themselves would dare to undertake the accusation of their more powerful seniors, with the expectation that, if successful, they could increase their own reputation at the cost of the defeated party. The full effect of this increase in reputation could be achieved only if the case was followed by the public, some of whom made up the circle to which the youngster hoped to gain access. From another perspective, everyone has an interest in public events where they can watch someone endure an ordeal that they may at some point have to undergo themselves; the possibility of “that could be me” greatly piques human interest. Equally, there are still others, who – though they realise that such an event will never befall them – nonetheless enjoy watching a courtroom drama that carries important, if not catastrophic, ramifications for the parties involved. Those with little or no employment could find this an entertaining pastime, less bloody than the circus. Thus, in principle, we can assume that Roman cases, whether private or public in nature, had the potential to draw sizeable audiences. It is also fair to conclude that cases of great personages, or of sensationalist impact, had by far the greatest potential to draw the largest audiences, while cases of a mundane nature drew small audiences or none at all.

Any study of the audience in attendance at a case must begin from a diverse collection of ancient references, in many of which the audience is very much peripheral to the main subject. The picture that emerges from this information is unfortunately somewhat nebulous, yet still worth consideration. This chapter first identifies who made up a courtroom audience, then looks at audience participation during the case. Following that is consideration of how the social

institution of patronage was manifested in the courtroom environment, while the final section briefly glances at audiences that can be linked specifically to individual courts (e.g. the *quaestiones perpetuae*, the praetors, the *praefectus urbi*, and the emperor).

The identity of the audience

Scattered sources provide the evidence of audience members within a courtroom of Rome. The results reveal a throng notably heterogeneous with respect to age, status, and impetus. Four identifiable groups may be singled out: those connected to the advocate, those who held a position in the court, those connected to the litigants, and those paid to attend. These categories exclude general audience members, who defy specific identification but were certainly also present. However, their nondescript nature leaves little to say beyond the few passing comments included at the end of this section.

The audience often included various individuals who had links solely to the advocate, rather than to the litigants. Considering the impact that a case could make on an advocate's political career – whether a young beginner or an established figure attempting to increase his *auctoritas* – it is not surprising to find members of his family among the audience, including parents, wives, and children.¹ Advocates found further support in their personal friends, and perhaps their clients as well.² Pliny mentions his *amicus*, Julius Naso, who is always at his side when he pleads.³ Advocates on occasion even took to joking with these friends when they paused for the audience's applause during their speeches.⁴

Also present with the specific purpose of observing the advocate were numerous youths of the Roman aristocratic circle. As part of the education of Rome's future leaders, Quintilian insists, youths should attach themselves to at least one of the great orators from whom to learn court procedure, and perhaps forge links with other leading men.⁵ Pliny comments that Julius Naso saw the value of creating ties with other influential people, Pliny being one of them.⁶ Tacitus and Quintilian began their careers in such a way; both mention being present within the courtroom during their youth.⁷ Tacitus recalls not only listening to Marcus Aper and Julius Secundus speak in the courts – whom he calls “*celeberrima tum ingenia fori nostri*”, “then the most famous and talented men of our forum” – but also attending upon them both at their homes and in public to listen to their casual conversations.⁸ The *Dialogus* itself purports to record one such conversation.⁹ Quintilian recounts his own presence at a case held in the Basilica Iulia when he, as a youth, was attending the orator Domitius Afer.¹⁰ Quintilian also mentions being present as a youth at the oration of another pleader.¹¹ Other unidentified young men, although not recorded as attached to a specific orator, frequented the courtroom as well.¹² Fronto, in a letter to Squilla Gallicanus whose son had just completed an important speech before an unnamed court, mentions that he, unable to attend, had to wait for his pupils to return to learn of the advocate's success.¹³

In addition to the main courtroom participants (the judges, main advocate, and litigants) others are mentioned who served specific appointed roles. Litigants often had more than one advocate presenting their case.¹⁴ Frequently these would include advocates of less training, who used the opportunity to gain experience by undertaking the more routine parts of the cases. Quintilian describes the usual procedure:

*At quidam litigatoribus suis illum modo ambitiosum
declamandi sudorem praestitisse contenti cum turba
laudantium destituunt subsellia pugnamque illam
decretoriam imperitis ac saepe pullatae turbae
relinquunt.*

But some advocates, satisfied that the ostentation of the speech for their clients and their exhaustion resulting [from its delivery] was outstanding, depart from the benches with a crowd of praisers and leave that crucial battle to those inexperienced and often of the common throng.¹⁵

In Quintilian's opinion, the *altercatio* is even more important than the speech and really should not be left to the less experienced. The junior counsel appear to have been present for much of the case, and like the youthful followers, they were there to learn. When Quintilian stresses that the lead advocate must have a sufficiently extensive knowledge of such things as the private law, customs, and religion of Rome to be able to think on his feet, he remarks that if an advocate is confronted with unexpected problems "*non deformiter respectet et inter subsellia minores advocatos interroget?*", "will he not look shameful asking the minor advocates sitting on the benches?"¹⁶

The advocate had two other types of individuals as part of his legal support team. Quintilian mentions the presence of clerks, "*librarii*", who, in addition to their regular scribal duties, are found recording the identity of members of the audience who are to receive pay for their applause.¹⁷ Some advocates also received aid from a "*monitor*" (prompter), much to Quintilian's chagrin.¹⁸ In conjunction with his comments about the advocate relying on junior counsel for advice, he also mentions this individual and again stresses the need for the advocate to be self-sufficient. The comments of the prompter – unlike those of junior counsel, who did sometimes speak as advocates in the case – were private ones, meant for the advocate's ear alone.¹⁹ It appears that he could even talk to the advocate while the latter was addressing the court.²⁰

Attendants, part of every gentleman's daily entourage, also accompanied advocates to court, even though they did not have a specific legal role to fulfil. Pliny offhandedly mentions two of his entourage who, much to his disgust, were convinced on one occasion to act as *claqueurs*.²¹ These two non-citizen

youths, aged approximately seventeen, acted as his *nomenclatores*. Perhaps these two filled the same role as the *librarii* Quintilian mentions. Who better to note those to be paid for their applause than the attendants deputed to put names to faces?

In the courts that dealt with public cases, according to Quintilian, a *praeco* – crier or announcer – was present.²² The full extent of his role is unclear. In public cases it seems he called on the individual advocates to begin and announced when they had rested their case. Quintilian, in an effort to refute Rufus' claim that Latin contained a dual form which appeared in the word "*dixere*", cites the fact that "*'dixere' ... de pluribus patronis praeco pronuntiet*", "the praeco pronounces the phrase 'they have spoken' when multiple advocates speak".²³ This statement likely indicated the conclusion of the case for one or perhaps both sides.

Also present in the courtroom were relatives of the litigants. Extant sources mention only relatives of the defendant, never of the plaintiff or accusers. The family members we hear of include wives, children, mothers, parents generally, and kinsfolk (*propinqui*).²⁴ The defendant's family was not there solely to provide moral support. They also served a specific function, to excite pity in the judges by playing on society's strong devotion to the *familia*. Quintilian comments on the benefits of placing the defendant's unkempt, mournful-looking wife, children, and parents in sight of the judges.²⁵ The silent argument accompanying such a display was that the family could neither function without the defendant nor endure the possible penalty, should he be convicted.²⁶

Children could be particularly useful in the courtroom. On one occasion an advocate brought in a group of children, among whom he threw dice which they chased after, thereby enhancing the effect of his peroration by highlighting their innocent ignorance of the seriousness of the proceedings.²⁷ Another advocate's attempt to make dramatic use of a child in the courtroom backfired. At the crucial point of his speech he asked a sobbing child why he was crying, to which the child answered that his *paedagogus* was pinching him – presumably some prior arrangement had been made between advocate and tutor.²⁸

A comment from Juvenal makes one wonder about some relatives' sincerity. Describing how an advocate gains prestige not by being skillful but by looking rich, he continues:

... *rara in tenui facundia panno.*
Quando licet Basilo flentem producere matrem?
Quis bene dicentem Basilum ferat?

[E]loquence rarely goes with a cheap garment.
 When is it possible for Basilus to produce a weeping mother?
 Who could bear Basilus being eloquent?²⁹

It appears that Basilus cannot produce a mother in court because he does not have the money. Does this mean that if the litigant did not have a mother, one could be purchased in much the same way as mourners for modern funerals in Arab countries?³⁰ If so, then to the Roman advocate it may have been more important to create the theatrical effect (at the cost of realism) than to have legitimate family members present.

The value attached to the attendance of parents and children seems to have outweighed that of a wife's presence. In today's society a man on trial for murder would be better served by the visible support of his wife than of his parents. Perhaps this difference reflects the Roman ideology – also apparent in intestate succession laws – of placing greater importance on agnatic family relations. The evidence is too scant to be sure, but suggestive all the same.

Litigants often had supporters present to offer encouragement. These remained close to the litigant during the case, occupying nearby benches. As discussed in Chapter Two, the phrase *in subsellia* denotes the "other side", i.e. the opposing side of the court, so that the courtroom was divided into two areas, one for each litigant. It is reasonable to conclude that close friends of the litigants occupied some of the benches signified by the phrase. Quintilian acknowledges that to have a large group of relatives, friends, and clients present gives an impression of an individual's typical character and lifestyle.³¹ Elsewhere he condemns the advocate's trick of sending a witness to sit among the supporters of the other side, *in subsellia*, so that when the witness is called he will rise from among them and proceed to give evidence against them – which would appear all the more damning, since he would seem to be testifying against his friends.³² This witness would not sit on the bench of the advocate or litigant, but rather most likely among the litigant's supporters. Pliny, describing the courtroom scene at the case involving Attia Viriola, comments on the two sides: "*ingens utrimque advocatio et numerosa subsellia ...*", "and both sides had enormous legal representation and many benches"³³ Since Pliny then comments that this group was surrounded by a crowd of bystanders, it is very likely that these benches contained relatives and friends.

The identity of a few individuals who likely occupied these very benches during the hearings of their friends can be ascertained. Two leading men of Rome, Maecenas and Apuleius (the son of Augustus' half-sister), actively aided a man on trial for adultery;³⁴ Cassius Dio's language suggests that these two were not advocates for the defendant, but rather provided support as friends. Augustus attended Nonius Asprenas' trial out of friendship.³⁵ Martial apparently repeatedly heard his friend Gallicus argue cases.³⁶ In a letter to the future emperor Marcus Aurelius, Fronto (a leading advocate himself) discloses that he is going to court to support a close friend, "*familiaris*", but allays Aurelius' concern for his health by stating that he will not be doing the pleading.³⁷

The importance of social status and reputation that came together in one's own *auctoritas* no doubt played a large role in this public display of support for a litigant.³⁸ In such a status-conscious society, being able to assemble a

large number of supporters – including, if possible, a number of important people with great *auctoritas* – would have a marked effect on those judging the case. The potential increase of the litigant's own social importance by the display of important and powerful friends, as well as a large group of the litigant's clients, could be a happy by-product of such a stressful event.

Others attended who apparently did not have personal links to any of the participants, but little can be ascertained about their identity. The majority likely were inhabitants of Rome. They were either of such wealth that they could while away the day being entertained by court intrigue, or, if they were shopkeepers or employees of diverse types, they could perhaps drop by the courts en route to a delivery, or during a break, to hear the latest gossip. The attendance of the unemployed is also conceivable. While we have no direct evidence of their presence, the opportunity to rest on a bench out of the sun, and possibly be entertained, likely appealed to many who had no other pastime.

A few individuals are identifiable within this broad group of the general audience. Juvenal, in the course of contrasting the pay of advocates to that of historians, mentions creditors:

*dic igitur quid causicidicis civilia praestent
officia et magno comites in face libelli.
ipsi magna sonant, sed tum cum creditor audit
praecipue, vel si tetigit latus acrior illo
qui venit ad dubium grandi cum codice nomen.*

Tell me, then, the sum advocates earn working in court and from the big cases they do for friends. They talk big, especially when a creditor is listening, or, worse, if they are nudged in the side by that guy who comes with a large tablet about a bad debt.³⁹

Evidently the creditor was imagined to be there in the audience. His motives for attending seem clear: he knew his debtor, either litigant or advocate, would be present and thus he could approach the delinquent for payment. Roman society, with its less defined public and private spaces, perhaps enabled recalcitrant borrowers to hide more effectively while still conducting business; a fixed appearance in court certainly could have flushed them out.

Quintilian and Pliny also mention their personal attendance at various hearings as adults. Most likely they were attending as educated Romans with an interest in rhetoric and the courts. Quintilian heard Trachalus – whom he viewed as the brightest star of the times – speak before the first tribunal of the centumviral court in the Basilica Iulia.⁴⁰ Pliny, having heard a certain Pompeius Saturninus plead, praises his talent in a letter.⁴¹ Neither author suggests a specific tie to the proceedings.

We know of a couple of advocates who specifically invited people to the court to hear them speak. Pliny tells us that Regulus on more than one occasion invited people to listen to him argue.⁴² Larcus Licinus supposedly used such methods to gather an audience in the centumviral court.⁴³ Whom these advocates invited we do not know, but they must have been friends, acquaintances, clients, and the like. However, if, as Pliny suggests, this was an intermediate step which led to the practice of hiring audience members, perhaps such invitations took the form of flyers distributed door-to-door or in the forum, rather than personalized requests.

Paid audience members

Some indeed attended the courts for financial gain rather than to learn forensic oratory, offer support for a friend, or track down an outstanding loan. Various sources reveal that individuals were paid to support in some outward way one litigant or the other. Who hired these claque and how, what roles did they play, and when and where were they paid?

Inevitably, it is often difficult to separate the paid audience from others who were merely present and supportive. Pliny provides the most detailed description of this “rigged” court audience:

Sequuntur auditores actoribus similes, conducti et redempti. Manceps convenitur; in media basilica tam palam sportula quam in triclinio dantur; ex iudicio in iudicium pari mercede transitur. Inde iam non inurbane Σοφοκλεῖς vocantur, isdem Latinum nomen impositum est Laudiceni; et tamen crescit in dies foeditas utraque lingua notata. Here duo nomenclatores mei (habent sane aetatem eorum qui nuper togas sumpserint) ternis denariis ad laudandum trahebantur. Tanti constat ut sis disertissimus. Hoc pretio quamlibet numerosa subsellia implentur, hoc ingens corona colligitur, hoc infiniti clamores commoventur, cum mesochorus dedit signum. Opus est enim signo apud non intellegentes, ne audientes quidem; nam plerique non audiunt, nec ulli magis laudant.

Auditors follow similar to actors, for they can be hired and bought. A contractor makes the agreement; the handout is given in the middle of the basilica as openly as at a dinner party, and the audience can be transferred for the same pay from court to court. Indeed, nowadays not without wit they are called bravo-callers, and in Latin, dinner-clappers; and nevertheless the foulness noted in

both languages increases daily. Yesterday two of my name-providing attendants (they really are no older than youngsters who not long ago assumed the toga) were induced for three denarii to add their praises. So much will it cost you to be considered most eloquent. For this price as many benches can be filled as you would like, this huge crowd brought together, this endless shouting produced, when the chorus-leader has given the signal. The signal is necessary since they do not understand, nor even hear; while most do not listen, they cheer more than anyone.⁴⁴

In this passage we hear of two individuals in addition to the group: the *maniceps* and the *mesochorus*. The use of the term *maniceps* here in a courtroom setting is unique to Latin literature. In its more common legal usage the term refers to one who purchases or rents something from the state (e.g. right to collect taxes, lease of *ager publicus*).⁴⁵ The shifted context here suggests that he was the financial middleman between the hired audience and the purchaser. In addition, this passage contains the only appearance in Latin literature of *mesochorus*. The term is transliterated from its Greek equivalent, which appears only rarely in Greek literature. From Pliny's description it is clear that in the courtroom setting the *mesochorus* essentially directed the hired group. It is worthy of note that this job was important enough for a person to make a career of it. Tacitus describes a man who held a similar position in the theater, calling him "*dux ... theatralium operarum ... miscere coetus histrionali studio doctus*", "leader of the theatrical works ... expert at embroiling an assemblage with enthusiasm for an actor".⁴⁶ While it is difficult with such scant sources to say much more about these two positions, it is safe to assume that financial self-interest, rather than a personal stake in the cases, motivated these individuals.

So who actually paid for this enthusiastic artificial audience? The litigants had the most to gain from a crowd of people praising their advocate or denigrating opposing counsel. It is a surprise, therefore, to have no proof that directly connects a litigant with a group of paid supporters. Instead, the evidence suggests the advocate as the employer:

*Laudantem Selium cenae cum retrā tendit
accipe, sive legas sive patronus agas:
'Effecte! graviter! cito! nequiter! euge! beate!
hoc volui!'* *'Facta est iam tibi cena, tace.'*

Take Selius, who holds out a net for dinner, to praise,
if you are reading aloud or pleading a case:
'Good going! Weighty hit! And swift! And nasty! Well

done! Beautiful! That is what I wanted!' 'You have now got your dinner, be quiet.'⁴⁷

In this passage Martial addresses an advocate – someone who is “pleading a case”. In fact, the advocate is the only participant within the courtroom who is ever mentioned in context with the paid audience. Quintilian describes how the advocate might determine which members of the audience he would pay:

Unde moneor (ut ne id quidem transeam) ineptissime fieri, cum inter moras laudationum aut in aurem alicuius loquuntur aut cum sodalibus iocantur aut nonnunquam ad librarios suos ita respiciunt, ut sportulam dictare videantur.

This reminds me (and I would not pass over it) of a most tasteless thing of some speakers, [who] during the delay caused by the cheering of the audience, either say something in the ear of someone or joke with their friends or sometimes look back at their clerks so that they seem to be dictating [who will get] a handout.⁴⁸

This passage suggests the advocate as the instigator of payment for favorable applause.⁴⁹ Possibly, the advocate oversaw the arrangements of bringing together an audience on behalf of his client who, in actuality, footed the bill since the client was the one in need of visible support. But it would be strange for the satirists to go along with such deception, and not, rather, make fun of the person really attempting the deception.

I suggest instead that the sources do indicate the true purchaser of the claque, and thus reveal the importance placed on successful pleading in Roman society. For rising aristocrats, the judicial arena laid the foundation of a political career, and one certainly would not leave such things to chance or to the true merits of the case itself. The litigant, of course, would gain by such payment; it was his/her advocate getting the applause. If the advocate did not see a responsive audience as crucial to his own career, the litigant would no doubt try such methods to sway the verdict as well. However, note how the shift does in fact affect the purpose of the paid audience. Modern reasoning sees the litigant's acquittal as the sole purpose of any action by the advocate. But the advocate's purchase of an audience shifts the perspective towards the public reception of his ability, and away from his client. The audience is no longer present to work for the litigant's acquittal but rather to reinforce the advocate's performance. Taken to an extreme, this may indicate a reason for the so-called “decline of oratory”: the advocate was not really applauded for furthering his client's case.⁵⁰ One could object that the litigant's interests were so closely tied to those of the advocate that any approval

given to the one benefited the other. While this is true to a certain degree, on some occasions it appears that the interests of the two were unfortunately not the same, and the needs of litigants were subordinated to the reputation of the advocate. Quintilian complains that “modern” orators undermine their effectiveness in cases by showing too much:

At hoc pati non possumus et perire artem putamus, nisi appareat, cum desinat ars esse, si apparet. Pendemus ex laude atque hanc laboris nostri ducimus summam. Ita, quae circumstantibus ostentare volumus, iudicibus prodimus.

But this we are not able to endure and we think the art is wasted, unless it is visible, when actually it ceases to be art, once detected. We attach great value to praise and we consider this to be the highest goal of our labour. So, what we wish to display to the audience, we betray to the judges.⁵¹

This advertisement of the advocate’s skills hardly sounds beneficial for the poor litigant. Doubtless, however, the advocate had to weigh the political clout of his client before advancing his own career at his client’s expense.

There were, of course, practical logistics to the use of a paid audience. Pliny’s detailed description of the audience in his second book of letters, quoted above, has been used by Aldrete to suggest that the *manceps* created this audience by hiring people already present in the courtroom.⁵² Aldrete notes that even Pliny’s two attendants were hired to add their applause, and it is indeed likely that these two were hired on the spot. Yet the motive drawing hired audience members to the courtroom is important. Aldrete’s comment seems to suggest that these people were attending anyway, out of interest in the case, and getting hired was just an added bonus. Pliny’s further comment, however, that many of the hired audience could not understand the speeches, could not hear, and even if they could, did not bother to listen, suggests rather that individuals were present who had neither the desire nor the capacity to take in the case. Surely we can assume that such people attended specifically to be hired as a member of a clique. Many others were influenced by another motive – duty to their patron – which is discussed further below.

Two methods of hiring an audience emerge from the sources. Pliny, as we have seen above, describes the *manceps* making the arrangements.⁵³ He must have specifically hired the people he wanted in the morning, before the court day began, in order to avoid other audience members demanding payment for their self-proclaimed participation. During the hearing the *manceps*, or perhaps the *mesochorus*, must have tracked those hired to ensure their active participation. However, Quintilian’s description of advocates signalling to their clerks to note a payment during the extended applause of the crowd

suggests an alternative method.⁵⁴ In this instance an advocate, rather than a contractor, apparently doled out payment.

Yet numerous problems arise with the latter scenario. It makes little practical sense that the advocate was determining the recipients by noting their names during the case. How could he be aware of such things while presenting his case? And how did he determine who participated out of genuine interest, and who was doing so in hope of pay? Perhaps these two groups distinguished themselves by the amount of their participation; those hoping to be paid for their visible support made such a spectacle of themselves that the advocate could not help but notice. He may have predetermined how many, or how much, he would pay and in the course of the day noted particularly enthusiastic individuals. If so, however, it would then be clear to anyone present that the person was a hired supporter.

This method of hiring an audience would also be more *ad hoc* than going through a *manceps*. Perhaps there was some correlation between the importance of the case and the method of hiring. Pliny describes the hired audience assembled by a *manceps* in the centumviral court. The cases here could make or break an advocate's career, as well as the reputation and wealth of the litigants; therefore, it was wiser to leave few things to chance. A contractor ensured that an adequate audience of the proper zeal would be present.

But what of the numerous other courts in Rome? *Mancipes* likely worked in other courts as well – the *quaestiones perpetuae*, for example – but clearly as the importance of the case decreased at some point an advocate or litigant might have decided the matter was not important enough to warrant the outlay of money to employ a *manceps*, *mesochorus*, and organised audience, and yet still would have wanted a favorable group present. Quintilian's description of the advocate spontaneously rewarding individuals for participation would fit well in such a scenario; active participation would have been rewarded, but was not so critical to the parties involved as to warrant extra financial outlay and advanced planning.

When was the *claque* paid? The practical time would be after they had supplied the service. As mentioned, the *manceps*, *mesochorus*, or *librarius* of the advocate must have kept track of who had provided the service, whether or not prearranged. To pay the *claque* beforehand, and assume they would remain for the entire time agreed, would be too naïve. The simplest period of hire would be by the court day (following the more conservative view that the *claque* remained in one court for more than one speech) rather than the entirety of a specific case; it would have been too easy for individuals paid for an entire case to be absent on one day or another. The simplest way of controlling attendance was to pay only at the end of the court day, and at the end of the case if it did not fill the final day. Thus, at the end of any given court day the *manceps* for each case could be busily settling accounts with his hired *claque*. On the next morning, each *manceps* would again be at work making agreements with prospective employees for the day. If members of the *clagues*

worked multiple courts at once, the same method of pay could be used. The *manceps* would collect the amount from the advocates or litigants of the various courts and distribute it among the employees at the end of the court day.

The location where the claue (or claues) of the centumviral court was paid supports the conclusion that wages were distributed at the end of the court day. Pliny states that the claue was paid “*in media basilica*”, “in the middle of the basilica”.⁵⁵ During the discussion in Chapter Two of the physical arrangement of the four courts in the Basilica Iulia, it emerged that the most logical arrangement of the four tribunals – if each was hearing a separate case – would be for all four tribunals to be on the south side of the building. Thus, what Pliny calls the *media basilica* may have been the border between the middle two courts. The two courts on the edge could not easily access this area if the middle two courts were still in session, which supports the idea that pay was distributed only once all the courts had dispersed for the day.⁵⁶

The pay appears to have been quite good. Pliny reports that two of his attendants received three denarii (12 sesterces) each to give their applause,⁵⁷ although this rate no doubt was higher than the standard, since they were the attendants of one of the advocates.⁵⁸ From Juvenal we learn that *clientes* were given 25 asses, or a little bit more than six sesterces, as their *sportula*.⁵⁹ Scholars accept this as the standard *sportula* amount.⁶⁰ Is it a coincidence, then, that the attendants’ pay was double the standard *sportula*? The connection of these two attendants to one of the advocates involved certainly made them more desirable, and perhaps the carrot dangled before them was that they would be paid double the going rate for a regular audience member.

At the same time, however, a standard pay equal to the *sportula* seems rather low. But, by way of comparing such a daily wage, the pay of a legionary soldier during Pliny’s day was 100 sesterces per month, while that of a quarry-worker at Mons Claudianus in the mid-second century was approximately 47 sesterces per month.⁶¹ The book of Matthew also contains a landowner who hired day labourers for his vineyard for four sesterces.⁶² These comparative figures indicate that the two attendants were paid quite handsomely for their role.⁶³ What would entice people to take such employment for 6 sesterces, if they could earn the same by attending upon their patron? Given what we hear from Juvenal of a client’s day with a patron – that the day could be as long as the court day, and might include activities far worse than sitting in a courtroom – the opportunity of earning the same pay as a wage, rather than as a gift for which a *cliens* must first endure the putdowns and insults of his patron, would be quickly seized. Perhaps this seemingly low compensation points to the conclusion that the pay was not by the day, but rather by the case. Certainly, if the audience members felt they had a chance to collect the amount of their *sportula* and more in a single day, this choice of work would have been attractive. Unfortunately, there are too many unknowns to permit any firm conclusions.

Pliny's comment that the paid audience "*ex iudicio in iudicium pari mercede transitur*", "moved for equal pay from court to court" is thought-provoking.⁶⁴ Two possible sequences of events can be constructed. In the first, at the completion of one case the hired audience dissolved and moved to the next court that was preparing to begin, in hope of being hired on to a *claque* there. Such individuals could make a career of moving from case to case. However, courtroom procedure conceivably accommodated a different arrangement as well. In the same passage, Pliny describes the audience in the Basilica Iulia, the home to all four courts of the *centumviri* that usually met separately in concurrent sessions. A case comprised various speeches by counsel, the examination of witnesses and documents, cross-examination, and debate. Since cases varied in length, at any given moment each of these four courts were likely at different points in the hearing.

The hired audience's participation was most advantageous during the advocates' speeches and the debate (though it may also have been worthwhile to have people heckling witnesses). Thus, it is possible that individuals were paid to applaud only for portions of a hearing, such as the speech of one advocate, after which they were free to move to another courtroom where their next employer was beginning his speech. Such arrangements would clearly offer the greatest gain for the paid audience, since individuals could take on more cases at once instead of sitting through elements in which their skills were of little value. In this system involving multiple advocates, the job of the *manceps* would have been far more difficult and the calculation of pay more complicated. Whether such an intricate system could work in the centumviral court, or in other courts such as the *quaestiones perpetuae* (where multiple cases likely were also heard concurrently in the Forum of Augustus), and whether it would smack so much of insincerity as to make such applause next to useless, we cannot determine. However, these speculations bring new light to the possible financial enterprises in the Roman courtroom.

* * *

The sensational nature of a courtroom hearing open to the public guaranteed an audience highly diverse with respect to social standing as well as motives for attending, be it to support family members or receive pay. Many factors were at play. The status of the litigants likely determined to a certain extent the class of the supporters and friends, and also of the general audience. In the centumviral court, which dealt primarily with disputed inheritances, the litigants frequently were of the highest social level and therefore drew supporters from their social group. Pliny also implies that the fathers, daughters, and stepmothers who attended the case involving Attia Viriola did so because they worried that they could be in the same position as the litigants.⁶⁵ Such anxiety would exist only if they were somewhat equivalent in economic and social standing to the litigants. Those students who attended as

part of their rhetorical training certainly came from promising aristocratic families as well; Pliny mentions an upper-class youth who stood for seven hours to hear him speak.⁶⁶

However, others who had no hope of attaining the wealth and social distinction of these youths and interested aristocrats also attended cases and made a large enough impact to appear in the historical record. Messalla, in the *Dialogus*, states that breadth of culture in an orator is acknowledged by “*non doctus modo et prudens auditor, sed etiam populus*”, “not only the learned and scholarly listener but also the rank and file”.⁶⁷ Aper, commenting upon the fame achieved by orators, recounts that in the street “*saepius vulgus ... imperitum et tunicatus hic populus transeuntes nomine vocat et digito demonstrat*”, “often the ignorant common crowd, these tunic-clad rank and file, call by name [the advocates] passing by and point at them with their finger”.⁶⁸ We hear of members of the audience attending in their *sordidos pullatos* – common working clothes.⁶⁹ They, too, took an interest in court cases, more for the entertainment and no doubt as a source of income, as members of a *claque*.

Audience participation

In stark contrast to the hushed respectful silence of the modern courtroom audience, the ancient audience felt free to make known its opinion concerning all aspects of the case, including both the skill of the advocate and the guilt of the litigants. This was no silent group of spectators. The only time we hear of a silent audience, the silence was caused by the anticipation of a pleader’s commencement.⁷⁰ Since the audience composition was continuously changing, the constant movement and questions of the newly arrived – to ascertain whether a space on a bench was open or what was going on in the hearing – would alone have been disruptive. Seneca the Elder describes the advocate’s struggle: “*inter fremitum consonantis turbae intendendus animus est, vox ad aures iudicis perferenda*”, “[In the court] they have to concentrate, and struggle to make their voices reach the judge’s ears amid the competing hubbub of the throng.”⁷¹

Audience participation took many forms, but verbal exclamations were frequent. From a vivid scene constructed by Martial we learn a number of the phrases actually used on such occasions: “*Effecte! graviter! cito! nequitur! euge! beate! hoc volui!*”, “Good going! Weighty hit! And swift! And nasty! Well done! Beautiful! That’s what I wanted!”⁷² In another epigram Martial mentions a freedman who “*tergeminum mugiet ... sophos*”, “will bellow ‘Bravo!’ three times”.⁷³ Teachers of rhetoric urge students to practise their skill in noisy places, so they will be able to continue their speech in the noise of the courtroom and Quintilian reminds his students that for this purpose Demosthenes practised on the seashore.⁷⁴ Members of the audience even went so far as to give their opinion on the verdict. When a man was convicted of forgery in Claudius’ court, “someone cried out”, “*proclamante quodam*” that the man’s hands ought to be cut off. Claudius agreed and called for an executioner.⁷⁵ The

differing opinions of the audience could become so loud on occasion that it was even difficult to decipher what exactly was being yelled.⁷⁶

Verbal participation was not always favorable. We learn of one man who had a reputation for shouting abuse repeatedly during advocates' speeches – indeed, with such enthusiasm that some paid him to keep quiet.⁷⁷ Martial offers his own freedman for such a job: “*lis erit, ingenti faciet convicia voce: esse pudor vetuit fortia verba mihi*”, “If you have a legal suit, he will pour out insults in a monstrous voice: decency prevents me from such strong language.”⁷⁸ But perhaps not all succumbed to mudslinging, as Seneca tells us that contradictions were frequently tossed around the courtroom.⁷⁹

The audience also used less articulate methods of communicating their opinions. They frequently broke out into laughter, sometimes directed at the advocate. Quintilian recounts the story of an advocate wanting to display a picture of the deceased at various points during his peroration. Unfortunately, the person holding the picture did not know what a peroration was, so he displayed the portrait every time the advocate looked at him. By the time the correct occasion did come, the effect was meaningless and the audience roared.⁸⁰ Quintilian even goes so far as to say that an advocate must be very sure of himself before undertaking a particularly risky type of defence, because if he misses a step the audience will laugh.⁸¹ Seneca the Elder, when describing why so many declaimers cannot handle the transition into the courtroom, mentions the interruptions created by laughter.⁸² Noises other than laughter are also mentioned. Pliny, reporting the participation of audiences of his day, describes their contribution as “*ululatus*” (howling).⁸³ Laughter could also be meant by this term; however, it is equally possible that the noise was to indicate disagreement or hostility.

Did the audience restrict their participation solely to comments, laughter, and howling, or did they clap as well? In most modern translations of the relevant texts audience participation is translated as “applause”. Perhaps this is used as a convenient catch-all, but it leaves the impression that the audience at a hearing did clap. The Latin, however, does not easily support such a conclusion. The Latin vocabulary subsumed under the English “applause” is quite diverse. Most frequently, the ancients use some form of the verb *laudare* and the noun *laus* to indicate the audience's participation.⁸⁴ Also common are *clamare* and *clamor*.⁸⁵ While these verbs allow some room for interpretation, they point to verbal exclamations of the type Martial recorded, rather than to clapping.⁸⁶

The most common specific verb for clapping, *plaudire*, and the noun, *plausus*, almost never appear in reference to a courtroom environment. In his description of current audience participation, Pliny states that the “*ululatus*”, (howling) lacked only of “*plausus ... cymbala et tympana*”, “clapping ... cymbals, and tambourines” to make it a complete shambles.⁸⁷ The implied absence of clapping is clear. It is interesting that *plaudire* is in fact used almost exclusively in descriptions of applause at theatrical and spectacular events,⁸⁸ at one

show *clamor* is found, but it is so closely tied to *voces* that it must be interpreted to indicate verbal activity.⁸⁹

Arguably relevant is the most famous description of hired claque activity outside of the courts, found in Suetonius' account of Nero's formation of the *Augustani*, an Alexandrian-styled claque group, in which clapping was certainly an integral activity.⁹⁰ The vocabulary includes *plausuum* and makes mention of what must be clapping methods, since hands must be kept free of rings:

Neque eo segnius adulescentulos equestris ordinis et quinque amplius milia e plebe robustissimae inventutis undique elegit, qui divisi in factiones plausuum genera condiscerent – bombos et imbrices et testas vocabant – operamque navarent cantanti sibi, insignes pinguissima coma et excellentissimo cultu, puris ac sine anulo laevis.

Not content, he selected from all over youths from the equestrian order and more than five thousand of the strongest plebeian youths, who were divided into groups and taught the types of applause called "the bees", "the roof-tiles", and "the bricks". They worked zealously whenever he sang, and were distinguishable by their luxuriant hair, quite outstanding clothes, and their left hands, bare and without rings.⁹¹

It is also clear that this claque served in Nero's theatrical displays.

When one looks at mentions of the claque outside of the theater, the vocabulary changes in that one never sees any form of *plaudire*. At a public reading, Juvenal remarks that a patron will "*dare libertos extrema in parte sedentis ordinis et magnas comitum disponere voces*", "give freedmen and a claque to sit at the ends of the rows and distribute loud voices."⁹² In the courtroom, the claque also appears to be tied to verbal activity, and various forms of *laudare* and *clamare* are scattered throughout the sources. In Juvenal's thirteenth satire, for instance, a personified *sportula* "*{f}aesidium laudat vocalis agentem*", "praises some lawyer arguing a case."⁹³ Quintilian notes how a listener at a hearing can be swept up by the praise of others in the audience: "*ille laudantium clamor extorquet*", "the clamour of those praising sweeps [him] away" and how advocates are used "*ad clamorem dispositae vel etiam forte circumfusae multitudinis*", "to the uproar of the crowd either arranged or having come together by chance."⁹⁴ Pliny reports that "*infiniti clamores*", "countless shouts" are raised by the claque when the *mesochorus* gives the signal.⁹⁵ Quintilian states that "*laus*", "praise" in the courtroom is better if not bought.⁹⁶ Martial comments that an advocate should take "*laudantem Selium*", "praising Selius" with him to court.⁹⁷ Also noteworthy is the name given to the claque, which

Pliny supplies: “*laudiceni*” (dinner-praisers) and “Σοφοκλεῖς” (bravo-callers).⁹⁸ Predictably, there is always at least one reference that does not fit what appears to be a pattern. However, while this one raises a problem, it does clarify another issue. Maternus is describing the courtroom of his own day:

Unus inter haec dicenti aut alter adsistit, et res velut in solitudine agitur. Oratori autem clamore plausuque opus est, et velut quodam theatro ...

One or two are standing by this speaker, and the hearing goes on as if in solitude. However, an orator needs uproar and applause, as if in the theater⁹⁹

Again, this indicates that *clamor* was considered something different from clapping. Troublesome is Maternus’ suggestion that an orator received applause. It is possible, however, to argue that in his desire to draw a comparison with the theater, Maternus uses *plausus*, which has clear ties to the theater, in a situation where it does not specifically apply. Perhaps his inclusion of the type of praise that an orator really was used to, *clamor*, was meant to gloss over this laziness for proper terminology.

In *Gestures and Acclamations in Ancient Rome*, Aldrete strikingly compares the dynamics between a Roman speaker and his audience to the interaction between speaker and audience found in many revivalist churches today.¹⁰⁰ This interactive form of communication has been termed “call-response” and defined as “spontaneous verbal and non-verbal interaction between speaker and listener in which all the speaker’s statements are punctuated by expressions from the listener.”¹⁰¹ This parallel also seems very apt for the Roman courtroom. The audience’s participation there was primarily restricted to verbal statements and rarely, if ever, included any form of clapping.¹⁰²

Clientelae and the claque

The extent to which the institution of patronage still existed in Roman society in the first and second century, after the emergence of the emperor as the supreme patron of all Romans, is an ongoing topic of debate within ancient studies.¹⁰³ During the formative period of the institution of patronage in the early Republic, one of the main arenas in which both patron and client had to fulfill their obligations was the courtroom. The patron was to explain the laws, bring suits on behalf of his client, and defend the client in court. The client’s courtroom obligations consisted (or in later times were thought to have consisted) of aiding the patron in paying losses incurred in private suits and accompanying him to court when he was involved in a case, as well as providing visible support.¹⁰⁴ In the imperial period the evidence suggests

the same was true. In various texts we find clients accompanying their patrons to court; they could even, as Martial promises to do, go so far as to take on the garb of mourning.¹⁰⁵ Juvenal's first satire illuminates the client's daily life:

*ipse dies pulchro distinguitur ordine rerum:
sportula, deinde forum iurisque peritus Apollo
atque triumphales, inter quas ausus habere
nescio quis titulos Aegyptius atque Arabarches,
cuius ad effigiem non tantum meliire fas est.
vestibulis abeunt veteres lassique clientes
votaque deponunt, quamquam longissima cenae
spes homini; caulis miseris atque ignis emendus.*

The day itself is divided by the most admirable order of things: the handout, then the forum and Apollo learned in law and the triumphators, among which the upstart Egyptian, I know not whom, dares to have an inscription, the statue of which is only just worth pissing on. Experienced weary clients depart from the entrance-courts and they abandon the prayer, although the most long-desired prayer of men, for a dinner; it is made up for with cabbage and coals for the wretches.¹⁰⁶

While lacking in direct information, Quintilian and Pliny use language when describing the *claque* that suggests their attendance and payment possibly were not entirely free enterprise, but rather the pursuit of one of the fundamental tenets of clientship – supporting one's patron in the courts. The vocabulary describing the paid audience frequently coincides with that traditionally used for the patronage system. *Sportula* is used by Juvenal, Pliny, and Quintilian to refer to the payment received by the paid audience.¹⁰⁷ In the context of patronage, Juvenal describes how clients have to scramble to get a basket of goods (*sportula*) from their patron's doorway.¹⁰⁸ Pliny calls the paid audience "*laudiceni*".¹⁰⁹ Martial uses similar language concerning Selius.¹¹⁰ Again, Juvenal, although not discussing the same paid audience as Pliny, uses almost identical vocabulary to describe those clients who, after a day of accompanying the patron around Rome on business, hope they will be invited to dinner as payment.¹¹¹

Martial describes a scene in which it is certain that an individual was present in the court and participated in the very same way as the hired *claque* because a patron/client relationship existed between him and the advocate. This relationship clearly was not formed on the floor of the courtroom. It would appear that Martial himself is the client:

*Exigis a nobis operam sine fine togatam:
 non eo, libertum sed tibi mitto meum.
 "Non est" inquis "idem." multo plus esse probabo.
 vix ego lecticam subsequar, ille feret.
 in turbam incideris, cunctos umbone repellet:
 invalidum est nobis ingenuumque latus.
 quidlibet in causa narraveris, ipse tacebo:
 at tibi tergeminum mugiet ille sophos.
 lis erit, ingesti faciet convicia voce:
 esse pudor vetuit fortia verba mihi.
 "Ergo nihil nobis" inquis "praestabis amicus?"
 quidquid libertus, Candide, non poterit.*

You demand from me togaed work without end:
 I do not go, but I send my freedman to you.
 You say, "That is not the same." I will prove that it is much better.
 I can scarcely follow a litter, he can carry it.
 If you enter a crowd, he drives them all back with his elbow:
 I have a weak and tender side.
 No matter what you argue in your speech, I myself will be quiet:
 but that man will bellow "Bravo!" three times for you.
 If you have a legal suit, he will pour out insults in a monstrous
 voice: decency prevents me from such strong language.
 "So, you, a friend, will perform no service for me?"
 Yes, Candidus, whatever my freedman cannot.¹¹²

The inclusion of the reference to the courts, within the larger context of the epigram, strongly suggests that this freedman's attendance at the hearing was predetermined by the patronage relationship, and not solely by a desire on the part of the freedman to receive pay.¹¹³

Earlier, in the context of the logistics and methods by which audience members could earn pay, it was proposed that the advocate who indicated to his clerk that payment (*sportula*) be made to someone in the audience had no connection to the audience member, rather his attention was drawn to the stranger because of his active participation.¹¹⁴ However, in light of Martial's comments above, perhaps there in fact was a connection between these two. Possibly the reason the advocate noticed the individual and made a note was not because of the individual's aggressive participation, but because he was one of his *clientes*. This reading would explain how the advocate or his clerk knew the audience member; the advocate saw one of his own clients in the audience and realised that he was indebted for the client's participation. Martial's patron likely would have made a similar note of his attendance.

Is it then possible to go one step further and conclude that, since the language describing the *claque* and the patronage institution is identical, all

references to paid audience participation testify to a patron/client relationship between those audience members and the litigants or advocates? Re-examination of the sources with this question in mind reveals that, in fact, the only specific reference to individuals being *hired* to provide support for an advocate is found in Pliny's letter discussed above.¹¹⁵ In all the other references we cannot exclude the possibility that a patronage relationship existed between the advocate or litigant and those individuals in the audience who seem to have been present only for pay. The writings of Martial and Juvenal alone portray numerous occasions when clients did accompany patrons to the courts.¹¹⁶ It appears that some scholars, moved by Pliny's impassioned complaint of the ills of his time as seen in the collapse of patronage, draw more sweeping conclusions than are warranted. With the appearance of a *manceps* and *mesochorus*, they immediately draw a parallel between the courtroom environment and the theater and other settings where there is evidence of organized *cliques*.¹¹⁷ It must be remembered, however, that the traditional duties of the *cliens* called for participation at the courts, not at the theater or public readings. The existence of *cliques* at the theater does not reveal the collapse of patronage; actors could not demand the attendance of their clients – if their social standing was even high enough to acquire clients – since such attendance was not seen as a client's duty. Instead, it is conceivable that actors, by hiring *cliques*, were adopting similarly artificial means, to create the same receptive audiences that advocates had in the courts.

It is therefore illogical to argue that the advocate had to buy his own praise, and that all references to people providing praise are evidence of a paid *clique*. Perhaps previous scholars, in an overzealous effort to equate the courtroom *clique* described so vividly by Pliny with that found in the theaters, have unfairly underestimated the role of patronage. Since so many people had to be organized, were the *manceps* and *mesochorus* merely go-betweens for the advocate or litigant and their clients? This notion may be too extreme. A compromise would identify two groups of paid audience in the courtroom: those professionals with no ties to the participants in the case, the hired *clique*; and those people who were present out of patronage duties, either expecting some reward for their support or repaying a "debt" for previous support.¹¹⁸ If this description accurately describes the social links between some participants in the courtroom, the dynamic within changes drastically from pure capitalism to an additional arena for the public display of patronage – continuing this institution's central role in the development of *auctoritas* and the conservation of the existing social hierarchy.

* * *

Unquestionably the audience participated actively in the Roman courtroom and thereby played a role in the justice system. In an illuminating passage,

Quintilian compares how a person reaches a conclusion from reading versus listening to a speech:

In lectione certius iudicium, quod audienti frequenter aut suus cuique favor aut ille laudantium clamor extorquet. Pudet enim dissentire, et velut tacita quadam verecundia inhibemur plus nobis credere, cum interim et vitiosa pluribus placent, et a conrogatis laudantur etiam quae non placent.

In reading, judgment is more reliable, because a listener frequently is swept away either by his own preference for a certain speaker or by the din of an enthusiastic audience. To disagree feels shameful, and a certain silent modesty stops us from believing our own opinion to be better; meanwhile defective speeches are pleasing to many and a *claque* praises even those speeches that are not pleasing.¹¹⁹

In today's courts, by contrast, the audience is only to observe, and outbursts are not tolerated. The public has participating representation – the judge, the advocates, and of course, the jury. This does not, however, stop the modern public from feeling the need to participate; in particularly disturbing cases, throngs outside the courtroom fulfil the role that the ancient audience could play within the courtroom itself. If we imagine the transfer of such displays into the courtroom, we can appreciate the powerful influence that such an audience could have on the procedure and, very likely, on the outcome.

THE ADVOCATE

The advocate was the central element in the Roman courtroom, the lynchpin between the various participants; through him the litigant spoke, with him the opposing counsel argued, and by him the audience was moved and the judge(s) persuaded. While litigants initiated all cases and were the ones most affected, having to endure the consequences of the process and the ruling, within the courtroom they were not the focus of attention. Then, as now, the far more visible and active participant was the advocate and so, in most ancient accounts of cases, the advocates rather than the litigants receive much more attention. The spotlight was upon the *visible* contest between the opposing advocates.

The five sections in this chapter cover a variety of issues related to the identity of advocates and their individual “practices”. The first section delves into several complex and interdependent aspects connected to determining the status of advocates. The second section examines the types of cases advocates undertook. The third and fourth sections consider the factors that influenced their decision either to accept or to reject a prospective client’s case. The final section studies advocates who appeared in the courts of Rome, but had travelled from other parts of Italy or the provinces to argue a case.

Status, pay, the “decline of oratory”, and terminology

Modern studies of Roman advocacy often begin with a description of patronage, and note that the role of advocate was fulfilled by upper-class patrons of the involved parties. While perhaps accurate with respect to the republican period, the applicability of this description to the imperial period has been called into question.¹ Certainly many men of the upper classes aided in the courtroom those within their network of dependants (such patrons are very visible within the sources, which so clearly focus on the wealthy); however, there were also many other advocates who differed widely from the upper-class advocate in wealth, status, and education. One could propose that, in both periods, there were always two broad categories of advocates – patrons who represented their clients and advocates who “sold” their services – and

that this second group appears only in imperial period sources because these shed more light on the lower classes; the writings of Juvenal and Martial especially come to mind in this connection. Yet this explanation is too convenient, and it is more realistic to suggest that, towards the end of the Republic and into the imperial period, the patron's traditional role as advocate for his clients came to be supplemented, and perhaps gradually replaced, by advocates with different ties to the litigant. While this evolution of patronage continued during the imperial period, other social developments of the first century indicate that the class composition of advocates in Rome was undergoing extensive changes at this time, primarily due to the professionalization of advocacy, which opened such work to those outside the elite. These developments warrant examination, namely: the pay of advocates; the belief, especially prevalent among authors of the first and second centuries, that oratory was in an alarming state of decline; and the terminology used to refer to advocates. Through fresh consideration of these issues together, a more nuanced picture of first- and second-century advocacy emerges.

Several advocates from the upper classes are easily identified, as we find emperors and members of both the imperial family and other consular families taking on friends' cases.² A large number of "new men" also practised advocacy and many, in fact, became illustrious – Agrippa (friend and chief aide of Augustus), Epirus Marcellus, Pliny the Younger, Regulus, Vibius Crispus (whose successes were built on a foundation in advocacy), and Tacitus the politician and historian, for example.³ Equestrians such as Erucius Clarus, Pompeius Saturninus, Seneca the Elder, and Suetonius also argued cases.⁴

The imperial period saw an increase in the number of advocates of provincial birth as well. Writing in the early part of the second century, Juvenal comments on the numerous advocates coming from Africa and Gaul, and the province of Spain must also be added.⁵ From Africa came Septimius Severus (the friend of the mid-first-century poet Statius), and Fronto (c.95–166) as well as the latter's contemporaries Servilius Silanus, Postumius Festus, and Aufidius Victorinus.⁶ Domitius Afer, who died in 59, and Iulius Africanus (a contemporary of Pliny) both came from Gaul.⁷ Spain was the birthplace of Licinius Sura, Martial, Herennius Senecio, and Ursus Servianus, all roughly contemporary to Pliny.⁸ During the Flavian period many of the most powerful advocates were from relatively obscure and often provincial origins.⁹

Attempting to examine those advocates in any class below the uppermost is much more difficult, not only because few appear in our sources, but also because if they do it is often a single mention, with no further information. One is left to infer – from general comments about their pay or eagerness to find work – that these advocates were not from the upper echelons. For these persons, the writings of Martial and Juvenal are our best sources. Here we find advocates who (allegedly) cannot pay their rent, one who is bankrupt, another who drives mules if he does not have any cases, and one who used to

be a baker.¹⁰ While we must be cognizant of these satirists' penchant for the farcical and extreme, that such individuals existed at all is instructive.

As noted earlier, traditionally one of a patron's duties was to provide legal representation in the courts for his various clients, who did not pay for this service with cash but rather in turn provided other expected services.¹¹ Since there was no livelihood to be made, wealthy aristocratic patrons dominated the practice of advocacy because they had other sufficient sources of income and could devote time to such an activity. Gradually, however, it appears that litigants began to provide, or advocates began to demand, "gifts" for services rendered. By 204 BC legislation was necessary and the *Lex Cincia* specifically prohibited advocates from accepting gifts from their clients in payment.¹² We cannot be certain when, but it is clear that over time the prohibition became commonly disregarded. Cicero, a successful advocate of the late Republic, was also a very wealthy man, a large part of this wealth having come to him as a direct or indirect result of his forensic abilities – as he proudly avers.¹³

By 17 BC remuneration was so commonly expected and given that legislation was again enacted. The *leges Iuliae Iudiciariae* ordered that advocates must give their services for free and imposed a quadruple fine.¹⁴ How long this prohibition was enforced we do not know, but its effectiveness was certainly short-lived. The practice of exchanging payment continued and, following the disturbing suicide of an *eques*, Samius, who after paying his advocate Suillius 400,000 sesterces found him to be in collusion with the other side, the matter of pay for advocacy was again raised in the senate in 47. After a heated debate amongst the senators, Claudius offered a compromise, establishing a permitted maximum fee of 10,000 sesterces and stipulating that the amount of payment could be decided upon and handed over only after the case was complete.¹⁵

Advocacy could now bring open financial rewards. Martial tells us of two occasions when he was encouraged to take up advocacy specifically for the financial benefits. In one instance, Martial asks his friend Gallus for a loan of 20,000 sesterces; Gallus, wealthy and fond of his money, tells Martial that he could easily make that sum and much more if he took up advocacy, but Martial is hardly convinced.¹⁶ Later, however, Martial gives further thought to the suggestion and tells us that if he entered advocacy his provincial connections with Spain would bring him casks of Spanish olive oil and fill his pocket with money.¹⁷

Many advocates, however, still did not comply with the new law. Quintilian describes unscrupulous advocates who continued to bargain with prospective clients over the fee before accepting a case, so as to capitalize on litigants' desperation.¹⁸ By 105 it appears that non-conformance to the law had become the norm. When Nepos, taking his duties as a praetor of that year very seriously, issued a warning from his own court that he would strictly enforce Claudius' ruling, the public was critical of his effort: "*Invenimus, qui curva corrigeret! Quid? ante hunc praetores non fuerunt? quis autem hic est, qui*

emendat publicos mores?”, “We have found someone who will straighten the crooked, but, were there no praetors before him? Who is this man to correct the community’s morals?”¹⁹ These comments certainly suggest that Claudius’ law had made little practical impact.²⁰

The numerous attempts of both the assemblies and later the senate and emperor to stamp out the taking of pay by advocates surely is indicative of something running far deeper than our extant sources illustrate. Why were some individuals so insistent that advocates not accept pay, and some advocates so determined that they willingly broke the law? A further question must also be asked: once a law was established, why was punishment so rarely exacted?

Altruism and an idealistic notion that justice must be accessible to all were not at the root of the roughly 250 years of inhibiting legislation. That money was not to be exchanged did not preclude other benefits for an advocate, and consideration of such gains thus takes us a step closer to determining the motives behind the legislation.

During the early to mid-republican period, as I have indicated, advocates who argued cases for their clients were compensated, though rarely in monetary form. Instead, they received what has been termed “symbolic capital” – the litigant’s gratitude toward the advocate. Such indebtedness was of value since the litigant became obliged to accompany the advocate in public, perhaps, or to do a favor in return. This type of payment still existed in the imperial period; Quintilian comments on the creation of gratitude by aiding someone in court, and he also mentions the principle that such favors will be returned.²¹ Apparently clients often gave their advocates token gifts as indications of their appreciation. Martial mentions various rewards that we can assume were typical – “birthday gifts” – that grateful clients gave to Claudius Restitutus, a senatorial advocate:

*certent muneribus beatiores:
Agrippae tumidus negotiator
Cadmi municipes ferat lacernas;
pugnorum reus ebriaque noctis
cenatoria mittat advoco;
infamata virum puella vicit,
veros sardonychas, sed ipsa tradat;
mirator veterum senex avorum
donet Phidiaci toreuma caeli;
venator leporem, colonus haedum,
piscator ferat aequorum rapinas.*

[L]et the richer people compete with their gifts. Let Agrippa’s pompous businessman bring cloaks, fellow townspeople of Cadmus. Let the defendant charged with brawling and a drunken night send dinner suits for his advocate. Has a

defamed young woman won her case against her husband?
 Let her hand over genuine sardonyxes, but in person. Let the
 old admirer of our ancient ancestors give embossed work of
 Phidias' chisel. Let the hunter bring a hare, the farmer a kid,
 the fisherman the plunder of the seas.²²

We also find advocates, lower in social standing than *Restitutus*, receiving token gifts at the time of the *Saturnalia* festival from people they had represented. In Martial's epigrams the advocate *Sabellus* received half a peck of flour, Lucanian sausages, a little box too small to hold a few olives, as well as a napkin as gifts from his clients.²³ These hardly make an impressive display, and while Martial may be attempting to exaggerate their inadequacy, the implied cultural practice of giving token gifts for such services is certain.

Another form of payment valued by advocates was the creation or improvement of their public reputation. Like the litigant, an advocate could, by successfully attacking those of higher status through litigation, increase his own standing.²⁴ This was particularly important to those striving for a political career and the consulship. Pliny is but one example of someone who undertook prosecutions in his younger days to advance his career.²⁵ Even advocates of lesser status than Pliny could hope for increased respectability.

The formation and solidification of friendship were a further favorable outcome of a case, and could be considered a form of payment. The evidence for this is far more widespread among advocates whom we know to have been upper-class. It is difficult to determine whether the formation of such a relationship was a sole motivation for undertaking cases among the lower classes as well; this issue will be discussed in more detail when we look at advocates' choice of cases.

While gifts perhaps were originally seen as supplementary token rewards for good service, at some point individuals began to use financial remuneration as the sole form of payment. This shift probably originated within the patronage system itself. We cannot assume that during the Republic everyone had a patron to turn to for adequate legal assistance. In all likelihood, such individuals approached other patrons, with appropriate experience, and offered to compensate them for their aid. At some point – when, we cannot be sure – a split occurred in the patronage system. Crook calls it a “‘status to contract’ direction of movement” and argues that it affected many aspects of Roman society. The traditional relationship continued between a patron and his clients; however, in a parallel development others began to offer the same services for a fee, and with no patronage relationship between the two parties.²⁶

The opportunity to be paid for providing representation meant that those who needed an income could now enter this profession. Advocacy was a particularly rewarding area for such individuals because it still retained a high level of respectability due to its upper-class origins. Also, it did not require a great initial investment such as one would need, for example, to buy a ship for

overseas trading.²⁷ If one was articulate, ambitious, and could think on one's feet, success was possible.²⁸ The introduction of pay was central to the extension of this profession beyond the independently wealthy classes. Claudius' decision to impose a fee ceiling, so to speak, rather than outlaw payment for advocacy unequivocally indicates his recognition of smaller-scale advocates in Rome for whom the monetary income from advocacy was essential to their livelihood.

It is difficult to gain a full understanding of how much a non-aristocratic advocate might advance his social status through this profession. How far could he go? The evidence is incomplete, although naturally we hear of the extremes. According to Martial, Cyperus went from a baker's wages to commanding 200,000 sesterces per case.²⁹ There were "new men" who went from advocate to consul, though it is difficult to determine how much of a role advocacy played in their ascent.³⁰ Juvenal discusses the rise from teacher to consul of Quintilian, whose work as advocate clearly did play a substantial role.³¹ We must assume there were considerable numbers of men who made steady, but likely not so remarkable, advancement.

The gradual professionalization of advocacy, as well as the social advancement of many individuals who entered the occupation, provoked reaction from conservatives. Juvenal, our best source for information on advocates of the lower classes, also provides one of the most emotional reactions against this development. Juvenal has been called by Green "a stickler for respectable ancient convention".³² His lifetime, however, saw the continual redefinition of "convention" in practically all areas of Roman society. Juvenal's main theme in his satires is the effect of the newly monied upon the traditional class structure. But he does not restrict his attacks to advocacy alone since in his mind it was not the only method through which people of lower birth were reaching positions of high status; he equally condemns legacy hunters, foreigners in all professions, as well as the rising freedman class, focusing mostly on those individuals of foreign extraction. Juvenal most strenuously condemns those who attempt to step beyond their "proper" position or role. That advocates become objects of his hostility is significant for this study, in that this antagonism affirms the great extent to which advocacy was perceived as a channel for social advancement.

Juvenal particularly betrays his hostility toward upstart advocates through two themes. First, lawyers of principle are purportedly being ousted by cheap, flashy shysters. Second – more interesting to us and certainly more distressing to him – Juvenal must admit that first-class advocates can now be found in the "*ima plebe*", "common herd".³³ It was bad enough that foreign, lowborn advocates were replacing true nobles, but some even had the temerity to excel at it! In his seventh satire Juvenal describes a poor advocate trying to make ends meet. Basilus wants a glamorous case instead of the routine ones that comprise his living, but Juvenal is quick to add, "*quis bene dicentem Basilum ferat?*", "who could bear Basilus being eloquent?"³⁴ For Juvenal, only men of

appropriate background and good education were supposed to be good advocates, while anyone else went against the grain of proper Roman society.

Juvenal was certainly not alone in his elitism. In fact, other evidence suggests that he reflects a widespread upper-class sentiment dating back to the early first century. The reaction of many to Titus Labienus, a contemporary of Augustus, is revealing.³⁵ Seneca the Elder describes him:

Adfectabat enim censorium supercilium, cum alius animo esset: magnus orator, qui multa impedimenta eluctatus ad famam ingeni confitentibus magis hominibus pervenerat quam volentibus. Summa egestas erat, summa infamia, summum odium. Magna autem debet esse eloquentia quae invitis placeat ...

Indeed, he pretended to the severity of a censor, though his character was quite other; he was a great orator who had overcome many obstacles to arrive at a reputation for genius which men admitted rather unwillingly. He was very poor, very disreputable, very hated. But that eloquence must be great which pleases even the unwilling ...³⁶

A poor man with the ability to be an excellent advocate, Labienus appears to have suffered widespread dislike because he succeeded in spite of his social position. He is not accused of fixing cases, fleecing clients, or prosecuting indiscriminately, yet Seneca says that he was hypocritical and disreputable. What made him so, we are not told, and other sources provide little further information. We know that Labienus undertook the plaintiff's case in the centumviral court case concerning Urbinia's will, against defence counsel Asinius Pollio, a leading advocate of the day; so, Labienus was clearly working among the most prestigious advocates. Interestingly, we also know that in his speech for this case Asinius specifically attacked Labienus, for within a list of the weaknesses of the plaintiff's case Asinius includes the fact that Labienus was the plaintiff's advocate.³⁷ To Asinius' audience his deeper meaning must have been clear, but it is unfortunately lost to us. Perhaps Asinius was implying that Labienus would undertake those types of cases that more respectable advocates avoided. Perhaps the plaintiff's case was baseless, or the plaintiff was a prostitute claiming to be a long-lost sister, or something equally outrageous, and yet still Labienus was willing to take the case. We can only speculate as to the exact meaning of Asinius' statement. Since his speeches for this case circulated following its completion, Asinius likely won.³⁸

Certainly Labienus was not the only advocate disliked by contemporaries, but we see here an example of how advocates who were not part of the nobility of Rome could have their background used against them. Seneca's failure

to support his charges against Labienus with anything more specific than the latter's poverty and general notoriety points to baseless or highly subjective criticism, while Asinius' comment shows just how widely such a reputation could circulate.

Conservative hostility towards the social transformation occurring within advocacy during the first and second centuries fired many authors of the period to declare the "decline of oratory".³⁹ While some modern scholars have inferred that there thus were ever-decreasing opportunities for advocates, in his recent work on advocacy Crook has convincingly argued that the arena for emotive advocacy did not shrink at all. Mention is still made of long speeches and slow speakers in the *quaestiones perpetuae*, the court of the *praefectus urbi*, the senate, and especially the emperor's court.⁴⁰ It has even been suggested that the suppression of political oratory caused by the establishment of the Principate actually led to an increase in forensic oratory.⁴¹ That advocacy did not disappear is certain. Yet Crook does not return to consider how we handle the various ancient authors who bemoan this alleged regression. They saw a decline; if the profession did not collapse, what was in decline?

As we have seen, there was a progressive decrease in the status of those arguing cases. That, in turn, could have been viewed as leading to a decline in the *quality* of advocates. This is not to deny changes in the *style* of advocacy.⁴² However, contemporaries – such as Juvenal, with both his xenophobia and his status consciousness – inevitably equated a change in the class composition of advocates with a corresponding change in their overall quality, even if this deterioration was only imagined.

The diverse social status of practising advocates also came to be reflected within the common terminology.⁴³ Over the course of the Republic the original term, *patronus*, came to be supplemented by *advocatus*, and the two were used interchangeably, though *patronus* was used in particular for defence counsel.⁴⁴ Both terms are found in the writings of Seneca the Elder, Quintilian, Tacitus, Pliny, and others. At some point in the first century another term begins to appear more frequently in the literature – *causidicus*.⁴⁵ This term is used most often by Martial and Juvenal, but is also found a few times in Tacitus' *Dialogus*, Suetonius' *Lives*, and the letters of Fronto.⁴⁶ While it has been suggested that Juvenal used this term as a contemptuous alternative for *advocatus* or *patronus*, this interpretation can be taken one step further.⁴⁷ The examples found in Quintilian, Martial, Juvenal, and Fronto indicate that this specific term was used, rather than the other two possibilities, to indicate an advocate of lower status and perhaps (though not necessarily) of mediocre ability. This evolution in vocabulary thus further evinces the changes occurring within first-century advocacy. Quintilian's use of the newer term provides the clearest evidence that social distinctions were being made by the choice of vocabulary:

Non enim forensem quandam instituimus operam nec mercennariam vocem nec, ut asperioribus verbis parcamus, non inutilem sane litium advocatum, quem denique causidicum vulgo vocant, sed virum cum ingenii natura praestantem tum vero tot pulcherrimas artes penitus mente complexum ...

I am not seeking to construct some kind of forensic day-labourer, or a mercenary voice, or, so as to refrain from harsher words, an admittedly not un-serviceable advocate, whom they commonly call a *causidicus*, but [rather] a man [who] not only excels in natural ability but, in truth, has also embraced deeply in his mind all the finest kinds of knowledge...⁴⁸

It comes through very clearly in this passage that Quintilian sees a clear division between those advocates identified by their origins and career goals, and the types of advocates he wished to see rise again within the profession.

Further proof lies in the fact that *causidicus* is never used in reference to an advocate who is clearly from a noble family. Martial uses the term when he says that anyone can become an advocate.⁴⁹ He also uses it twice when he speaks of himself and his forensic abilities, or lack thereof.⁵⁰ The increasing variety of advocates entering the profession (Quintilian mentions three broad groups in the passage just quoted) led to a further refinement of the terminology referring to them. That the term stems from a description of what they did – *dicere causas* – only reinforces such a connection.

Why such a prolonged, negative reaction? Oratory in all its forms, political, deliberative, and forensic, was one of the defining skills of an upper-class Roman man.⁵¹ During this period of Rome's history, the upper classes were attempting to redefine their political and military powers and roles in relation to the emperor; in these developments they were forced to follow the emperor's lead. The creation of the Principate also meant a questioning of the power associated with specific social classes since new groups were being asked to shoulder greater responsibilities. Advocacy was certainly an area of considerable social change. Levick has pointed out that during the early Principate several measures were taken "designed to strengthen the existing social structure and keep its strata distinct".⁵² While many of these measures were initiated by the emperor, some were instead undertaken by members of the established group, who felt free to attempt to exclude the newcomers. The senatorial debate in 47 over pay for advocates was likely one such attempt.

Some scholars have argued for a general withdrawal of the upper classes from advocacy during this period, suggesting that the old established group lost the fight and were replaced by new upstarts.⁵³ To respond to such an argument, one must ask how "upper classes" are to be defined. If narrowly, as those of the ancient noble families who could trace their line to the republican

period, the argument may be strong since such families suffered significantly in the proscriptions and civil wars of the late Republic. Pliny rejoices at two aristocratic neophytes, Fuscus Salinator and Ummidius Quadratus, arguing a case before the *praefectus urbi*: “*Quid enim aut publice laetius quam clarissimos iuvenes nomen et famam ex studiis petere, aut mihi optatius quam me ad recta tendentibus quasi exemplar esse propositum?*”, “What could be more pleasing to the community than that very distinguished young men seek name and reputation from eloquence, or more gratifying to me than that in their efforts to become models of upright behavior I was recommended to them as an example?”⁵⁴ Sherwin-White is likely correct to interpret Pliny’s statement to mean that by then it was unusual for members of the old families to participate.⁵⁵

However, if we define “upper classes” as those of secure wealth, whose families had held public office including the consulship, who were powerful and closely connected to the emperor and other officials, then to say they withdrew is erroneous. In Fronto’s day, after Pliny’s lifetime, we find members of such an upper class, including Fronto himself, very much involved in the courts. Thus, there was not a withdrawal of the upper classes but rather a transformation of membership within these groups; the old noble families now had to share the field of advocacy with many others whose origins cut a wide swathe across the social hierarchy.

One clear result of this expansion was that conservative Roman nobles lost the courtroom as an exclusive forum for creating and validating their own status and position before all Roman society. While Pliny was only on the fringes of this noble group, he reflects its exasperation. In his most negative letter concerning the centumviral court he voices his irritation at the audience for liking those who practise the new “corrupt” styles of oratory, fashioned only to please their listeners.⁵⁶ Perhaps his exasperation is heightened by anger that the audience, in applauding these men, was not playing its proper role of reinforcing the position of the upper-class advocate. The changing form of patronage in the empire played a role as well. With the establishment of the emperor as ultimate patron of all Romans, the lower classes were exchanging their private patrons for a public one, a change that could certainly have altered their view of whom to applaud in the courts. Fewer and fewer ordinary citizens were directly tied to an upper-class advocate through patronage, so as members of the audience they could feel freer to give their applause to whoever pleased them.

The cases of advocates

I have demonstrated that advocates of the first century came from diverse classes and entered the profession with equally diverse goals. Inevitably, the cases these advocates undertook and the motives driving them to accept or reject a specific case also differed widely. Notably, busy advocates are found among all status levels. Martial says his friend Decianus is always occupied with his cases. Seneca

the Elder tells us that on any given day Cassius Severus only would argue two private cases, or one public case. Even the struggling advocates who hung around the *fora* hoping for business could have busy days. Martial tells his friend not to bother Pompeius Auctus until after the tenth hour because he will be busy with cases until then.⁵⁷ Reconstructing the caseloads of a few upper-class advocates can be done with some success. What follows are the reconstructed caseloads of three advocates to whom a number of cases can be confidently assigned.⁵⁸ Through such examination, an impression, if somewhat limited, can be gained of what types of cases appeared within an upper-class advocate's dossier. Discovering what types of cases preoccupied individual lower-class advocates is far more difficult. A few features of these advocates' practices can be identified, however, and warrant consideration. Using these caseloads as a springboard will then enable a broader discussion of the factors advocates weighed to decide whether to undertake a case or refuse it.

C. Asinius Pollio

C. Asinius Pollio is the earliest advocate living into the imperial period to whom we can assign a substantial number of cases.⁵⁹ In approximately 55 BC, at the age of 21, he entered his only accusation, a case against C. Cato.⁶⁰ The nature of the dispute is unknown. This may have been Asinius' first large case, undertaken in an effort to launch his career as an advocate. We hear no more of accusations.⁶¹ Several other cases of Asinius are mentioned in the historical record, but unfortunately none can be dated with certainty. Sometime during the existence of the Second Triumvirate, Asinius defended L. Aelius Lamia (who was later to become governor of Hispania Citerior after leading successful military campaigning in the region) in an unknown court – probably with success, since the speech was published.⁶² We know he undertook several criminal cases. He defended Moschus the Apollodorean, a declaimer accused of poisoning. Asinius lost this case, probably in the *quaestio* that dealt with poisoning charges, and Moschus was almost certainly exiled since he is mentioned as teaching in Marseilles.⁶³ In likely the same *quaestio*, Asinius defended a close friend of Augustus named Nonius Asprenas, accused by Cassius Severus of poisoning 130 dinner guests. On this occasion, Asinius obtained an acquittal.⁶⁴ At some point he also undertook the defence of Mam. Aemilius Scaurus. The charge is unknown, but it went before a panel of judges.⁶⁵ He is also found arguing cases in the centumviral court. He defended the heirs of an otherwise unknown woman named Urbinia against an unidentified opponent represented by Labienus; above, we discussed Asinius' disparaging remarks about Labienus, but we do not know the details of the case.⁶⁶ He also defended another unknown woman, Liburnia, perhaps with co-counsel Messalla Corvinus, a leading statesman who had been offered the post of *praefectus urbi* by Augustus; a will, possibly her son's, was disputed. It is likely that this inheritance case was also heard in the centumviral court.⁶⁷

Cn. Domitius Afer

We also have some knowledge of specific cases undertaken by Cn. Domitius Afer, including three accusations.⁶⁸ While praetor in 26 he successfully accused Claudia Pulchra, a granddaughter of Augustus' sister and second cousin to Agrippina, and her lover Furnius in the senate on a clutch of charges, including unchastity, adultery, and treason against the emperor. According to Tacitus this case brought Afer to public notice as an orator, though he was likely aged between 31 and 36 at the time – a far cry from Asinius' first known case at 21.⁶⁹ In the following year he accused P. Quinctilius Varus, the son of Claudia Pulchra. The nature of the case is not mentioned, and it never advanced to the courtroom.⁷⁰ At some unknown time Afer also appears to have accused a freedman of Claudius, but the matter of this case is also unknown.⁷¹

Tacitus assigns the role of defender to Afer in subsequent years, but gives no further information.⁷² From other sources we know of five clients defended by Afer. He represented two women: Cloatilla, the wife of a rebel involved in a revolt against Claudius in 42, likely on treason charges in the senate; and one Laelia, on unknown charges.⁷³ A few passages from his defense for Cloatilla have survived, suggesting he won the case.⁷⁴ Alongside two other advocates, Crispus Passienus and Decimus Laelius, Afer spoke on behalf of Volusenus Catulus, of whom nothing is known beyond his consular rank and involvement in a public restoration project commemorated in an inscription.⁷⁵ The nature of the case is equally unknown. Conversely, on one occasion Afer defended an unknown client's free status.⁷⁶ While the evidence is somewhat unreliable, it appears he also once represented a community, the people of Augusta Taurinorum.⁷⁷ Pliny tells us that Afer spoke before the centumviral court at least once when Quintilian was present. Again, we do not know the nature of the case. The tone of Quintilian's story suggests that speaking in this court was for Afer a regular event.⁷⁸ While we hear of many cases in which Afer was involved, we know the outcomes of surprisingly few.

M. Cornelius Fronto

While the cases of Asinius Pollio and Domitius Afer demonstrate a fair variety, the known caseload of M. Cornelius Fronto (c.95–166), although surviving in fragments, contains a still wider assortment of clients, second, in fact, only to Pliny's.⁷⁹ A notable feature of Fronto's caseload is that all the known cases, except perhaps one, involved individuals or groups from outside Rome. But we can say with some conviction that they all took place in Rome.

Certainly the most controversial case (for modern scholars) involved Herodes Atticus – an Athenian senator and friend of Hadrian, Antoninus Pius, and Marcus Aurelius – and possibly one Demostratus. Although unable to

confidently identify the actual litigants in this case, we can propose that Fronto represented either the city of Athens or Demonstratus, an Athenian citizen.⁸⁰ The outcome of the case is not known.⁸¹ We are aware of three cases in which Fronto represented individuals in court.⁸² Sometime in the 120s or 130s, he represented an unknown client in the court of the *praefectus praetorio* Marcius Turbo, a skilled general and loyal confidante of Hadrian.⁸³ The nature of the case is not stated, but its appearance before the *praefectus praetorio*, suggests it originated outside Rome.⁸⁴ Apparently, shortly before 143 Fronto also represented an heir in a case involving the will of a testator who lived in Asia.⁸⁵ This matter was apparently referred by the proconsul to the emperor's court, where Fronto spoke.⁸⁶ He himself identifies one of his long-term clients. In a letter dated to between 153 and 156, commending Saenius Pompeianus to Marcus Aurelius, he states that he has had a steady amount of litigation provided to him by Pompeianus ever since he took up the contract for farming the taxes in Africa.⁸⁷ He does not describe the details of this litigation, but we can assume that it included, among other things, possibly legitimate complaints of overtaxation.⁸⁸ The normal location for such cases would have been in a praetor's court.⁸⁹

Fronto also undertook cases on behalf of provinces. Fronto himself twice mentions his speech *Pro Bithynis*, and from his comments it appears that somehow his past life was included as relevant within the speech, and also that the charges were apparently serious.⁹⁰ Most likely Fronto had been retained by the Bithynian provincial council to accuse a proconsul of *repetundae* with *saevitia*, extortion committed with violence.⁹¹ Fronto also mentions that he always represented both public and private interests of the Cilicians before the emperor.⁹² It is regrettable that he speaks so generally here. His involvement was clearly forensic, but his vagueness leaves us free to hypothesize. These cases could range from matters brought to him by the provincial council, such as *repetundae* cases similar to those he undertook for the Bithynians, to cases in which Fronto represented individual inhabitants of the province in purely private matters. While it is exciting to envision such possible diversity, it is probably more realistic to conclude from his statement that he represented the Cilicians solely as a collective entity.⁹³

Fronto perhaps acted on behalf of communities, though the evidence is not solid. A late author attributes to Fronto a speech entitled *Pro Nucerinis*, a community not far from Pompeii.⁹⁴ The lateness of the source suggests that it may be a forgery; however, as Champlin notes, Fronto did have a villa at nearby Surrentum and the Nucernians were believed to have colonized Fronto's north-African hometown of Cirta.⁹⁵ Another late source, the grammarian Charisius, mentions a further speech, *Pro Ptolemensibus*, which perhaps refers to the city in the province of Cyrene.⁹⁶ Such community names indicate that Fronto's reputation as a defence advocate extended throughout Italy and across the Mediterranean.

* * *

This brief glance at the known legal activities of three influential advocates ranging in date from the earliest years of the Principate to the mid-second century provides a stable paradigm of the types of cases that advocates of high social standing undertook. We find them representing individuals, communities, and provinces. These men argued for and against charges of treason, murder, and poisoning, as well as representing their clients in questions of status, finances, and inheritance. All appeared in a variety of courts, including the senate, *quaestiones perpetuae*, centumviral court, court of the *praefectus praetorio*, and before the emperor. We hear of very few of their accusations, but this is not surprising. The elite frowned upon making accusations and thus no one advertised their prosecutions. Certainly, the cases examined above comprise only a small fraction of the total that the three men undertook in the course of their careers. What survives, however, certainly provides insight into the variety of individuals and cases that could come across an advocate's desk.

The cases of advocates not of the upper classes

To a degree, any discussion of cases in the senate or the centumviral court, as well as of clients such as governors or provincial communities, assumes that the involved advocate was of a certain standing. While we cannot state with certainty that only advocates of specific classes represented litigants of certain types, the structure of Roman society suggests that such norms existed. Litigants of obvious aristocratic background likely sought representation by advocates of like standing. Far less common in the sources, yet equally unremarkable, are advocates of higher social standing representing litigants of lesser status. The professions of the clients of Restitutus, the aristocratic advocate whom Martial tells us received various gifts, suggest that their status was inferior to his. However, that the defamed woman and the brawler were able to give quite expensive gifts suggests they were of some wealth.

If sources of information on advocates of higher social standing are limited, the evidence all but disappears when one attempts to identify the cases that advocates of lesser status, in search of wages and a livelihood, were taking. Yet, while there was a high concentration of legal activity among the upper classes (since they had both the means and the time to resolve issues in the courts) the legal activities engaged in by the rest of the population still must have far exceeded the upper-class numbers, solely due to the population ratio. Horace comments that an advocate of middle rank still had value.

... *Consultus iuris et actor*
causarum mediocris abest virtute disert
Messallae, nec scit quantum Cascellius Aulus,
sed tamen in pretio est ...

A jurist and average advocate is wanting in skill next to eloquent Messalla, nor does he know as much as Aulus Cascellius, but nevertheless he does have value ...⁹⁷

Unfortunately, Horace is very much the exception in mentioning that type of advocate. The “average” so seldom made it into the sources.

Juvenal’s seventh satire is one of our best resources for the study of the lower-status advocate. However, when examined for specific cases, the piece supplies surprisingly few. We hear solely of two possible cases: an advocate dealing with a case in which someone’s status is being contested is approached by a prospective client who asks him to take on another case involving a bad debt.⁹⁸ Money and citizenship status – these certainly correspond to what were likely to be some of the greatest issues of concern for the lower sections of Roman society, and Juvenal’s inclusion of them as examples underlines their frequency. We gain the sense from Juvenal’s description of a downtrodden advocate, Basilus, that a dull, repetitive case-load was all too common:

*... ideo conducta Paulus agebat
sardonyche, atque ideo pluris quam Gallus agebat,
quam Basilus. rara in tenui facundia panno.
quando licet Basilo flentem producere matrem?
quis bene dicentem Basilum ferat?*

... so Paulus was renting a sardonyx [ring] and so he made more than Gallus, more than Basilus. Eloquence rarely goes with a cheap garment. When is it possible for Basilus to produce a weeping mother? Who could bear Basilus being eloquent?⁹⁹

Likely there was a link between specific courts and the average status of the advocates who normally appeared in them, though to what extent we cannot identify. Quintilian certainly considered private litigation as a whole (excepting, of course, the cases of the centumviral court) as “small beer”, to use Crook’s phrase.¹⁰⁰ We can tentatively identify one or two of these courts. Recalling the various *vadimonia* documents that recorded diverse hearings that came to Rome from the Naples region, we must wonder whether these individuals, who do not appear to have been particularly wealthy, retained advocates at home who then accompanied them to Rome, waited with them for the case to be heard, and then returned home with them. This sequence of events seems impractical as well as expensive, since the advocate would have been “on the clock”, so to speak, the entire time. Martial, however, provides an alternative course of action and at the same time reveals how at least a few advocates made their living in Rome. In his seventh book of epigrams he describes Pompeius Auctus:

*Mercari nostras si te piget, Urbice, nugas
et lasciva tamen carmina nosse libet,
Pompeium quaeres – et nosti forsitan – Auctum;
Ultoris prima Martis in aede sedet.
iure madens varioque togae limatus in usu
non lector meus hic, Urbice, sed liber est.*

...
*hunc licet a decuma – neque enim satis ante vacabit –
sollicites ...*

If it annoys you to buy my trifles, Urbicus, and nevertheless you want to know my wanton verses, seek out (and perhaps you know him) Pompeius Auctus. He sits at the entrance of Mars the Avenger's temple. Steeped in the law and having perfected the various uses of the gown, this man is not my reader, Urbicus, he is my book.

...
You may solicit him from the tenth hour onward (he does not have enough free time before that) ...¹⁰¹

What more efficient way of serving a need? In this forum, to which many cases initiated outside of Rome were first referred, numerous litigants arrived – most likely without representation. Here we find Pompeius Auctus, an advocate expert in all forms of the law, for hire. For an advocate in search of work, this location would have been ideal. There he could offer his services to incoming litigants who might be in need of an advocate at short notice. Once the two parties had executed the *vadimonium*, they then likely approached the praetor's court to set a time for their case. Depending on the praetor's schedule, the case might be heard at once or be scheduled for several days, or weeks, later. Serving these litigants was also a good business. Martial tells his friend to forget about trying to catch Pompeius until after the normal court day is complete. We have no way of determining the total number of cases coming before the *praetor urbanus* and *peregrinus*. However, if Pompeius was this busy, it is likely that the numbers were substantial enough to provide an adequate living for a number of enterprising advocates.

For those with some connections to an upper-class advocate, either through patronage or some other tie, the potential was there to serve as an assistant advocate. Quintilian criticises some advocates who, having given the opening speech for their cases, promptly abandon the court, leaving the debate portion for others to undertake. Quintilian describes these assistants as "*litigatoribus imperitis ac saepe pullatae turbae*", "pleaders [who are] inexperienced and often of the common throng".¹⁰² How widely available this sort of assistantship was we cannot know, but the very possibility of such associations is informative.

While identification of most of the cases undertaken by non-aristocratic advocates is not possible, advocacy clearly was seen as a profession that promised financial reward and social advancement. Advocates such as Eprius Marcellus who rose from humble beginnings to positions of great wealth and power or, less spectacularly, the baker Cyperus who came to make 200,000 as an advocate, did much to sell the profession to others hoping to make it big.¹⁰³ Advocacy was also viewed as a means by which a new arrival to the city could gain a toehold in Roman society. Martial speaks of two men who are moving to Rome. One has already planned to become an advocate while the other, Fabianus, appears undecided on his course of action.¹⁰⁴ Martial runs through the list of "careers" newcomers typically took up in an effort to get rich quickly. He could be a pimp, or a professional hanger-on, or undertake other unsavoury jobs; however, third on the list is the profession of advocacy. Martial continues with the remark that Fabianus is ill-equipped for any of these careers, for he is too honest; furthermore, as is common in careers that hold out the promise of quick wealth, the reality may be otherwise – the pay could be low or the litigant hard to find. Martial reminds the man planning to become an advocate in Rome of two men they both knew who had become advocates but could not cover their rent. We also hear, again from Martial, of an advocate who supplemented his advocacy career by driving mules.¹⁰⁵

Advocacy clearly held out the prospect that one could come to Rome and, without much training, have the opportunity to make it big. Enough men achieved success for such a belief to develop. But, as the adage goes, for every success there are two failures. More likely, the average was somewhere between the extremes. Perhaps we find it in our man Pompeius Auctus, who was kept busy in the Forum of Augustus with small legal matters involving parties of no real importance.¹⁰⁶

* * *

The above clearly reveals the diversity of an advocate's client base and, of perhaps still greater importance, shows how far beyond the boundaries of Rome an advocate's involvement could take him. As has also been shown here and in the earlier discussion of the litigant, the docket of the Roman courts was not restricted to wealthy middle-aged male litigants. Rather, we find the old and the young, male and female, the rich and the poorer within the courtroom, all of whom would have benefited from the support of an advocate. That Rome was the judicial centre of the empire meant advocates within the city could be serving the additional important function of helping those from Italy or more distant homes, whether individuals, communities, or even provincial councils, to navigate Rome's legal system. In this respect, such advocates were representatives of the Roman governing structure, whether they served as prosecutors or defenders. In this capacity

they had the opportunity to either reinforce or dispel whatever preconceived negative or positive notions such outsiders had formed of their overlords.

Factors in the selection of cases

An advocate considered a variety of factors when determining whether to accept a case. Examination of what influenced an advocate's decision must again take into account his status.¹⁰⁷ An added problem (already noted) is the impossibility of determining rigid groups, of attributing specific features or motives only to those above a certain level. It is tempting to use the taking of pay as the criterion to separate advocates into an "upper-class" group that followed the traditional motive of patronage and a "professional" group motivated solely by income. The exceptions, however, at once negate the possibility of such a rule. We have already discussed the fact that upper-class advocates could and did accept pay, though perhaps indirectly, for their services. Even senators fell on bad times – like the grandson of the famous orator Quintus Hortensius, Marcus Hortensius Hortalus, who begged Tiberius for financial help – and could, under such circumstances, be motivated to take a case solely for financial recompense. Hortensius in his plea before the emperor mentions that he did not, in fact, inherit his ancestors' gift of eloquence. Perhaps he had already thought of attempting to make money by advocacy.¹⁰⁸ At the same time, we also must assume that even advocates of very low status took on cases for free from time to time, for family or close friends.

Pliny quotes a saying of Thræsea Paetus about which cases advocates should undertake: "*causas aut amicorum aut destitutas aut ad exemplum pertinentes*", "cases of friends, or that no one else would take on, or that would establish a precedent."¹⁰⁹ Thræsea Paetus is not alone in placing friendship at the top of the list. According to Quintilian, an advocate's case will appear stronger if he can say that he took it out of duty to a friend or a relative.¹¹⁰ Aper, in the *Dialogus*, rejoices that the advocate is "*semper armatus praesidium amicis*", "always armed as a protection for his friends".¹¹¹ Even Ovid suggests that advocacy allows one to protect one's friends.¹¹² The formation of friendship with an advocate was, not surprisingly, not always left to happenstance. The valuable skills that advocates possessed led some specifically to seek friendships with them. Statius Sabinus admitted to Pliny that he sought his friendship for his legal talents.¹¹³ The comment may have been stated flatteringly, but could contain truth. A good advocate did not have to seek friends; they came to him because of his eloquence.¹¹⁴

A tie of friendship need hardly have benefited only the litigant. Serving as advocate could at times be very much a form of commerce, by creating gratitude. Above, this commerce was referred to more diplomatically as "symbolic capital".¹¹⁵ Quintilian defines its most basic element: "*mutua benivolentia utitur*", "one good turn deserves another" and places the responsibility of

repayment on the shoulders of the debtor.¹¹⁶ In his letter concerning the *repetundae* trial of Classicus, Pliny mentions the gratitude he could win from his clients at little expense to himself, since Classicus was already dead and so Pliny would not suffer the stigma of causing the downfall of a senator.¹¹⁷

Symbolic capital could be utilized in diverse ways. Besides the most obvious political and economic advantages created by such connections,¹¹⁸ symbolic capital was used by Pliny, and especially Fronto, through letters of recommendation to obtain favors, including posts for others or even an advantageous hearing before a judge.¹¹⁹ Symbolic capital could also obligate the debtor to aid friends of the creditor, thus widening the circle of those affected by the initial transaction. Aper comments on the pleasure an advocate must find in people always coming to him to enlist his aid with respect to "*sua aut amicorum discrimina*", "their own disputes or those of their friends".¹²⁰ At least one advocate must have felt quite intense pressure. Augustus attempted to prevail upon an unidentified friend to argue the case of one of his *clientes*. The advocate, however, was extricated from the situation by the *cliens* when the latter insisted that Augustus take the case himself.¹²¹ In discussing which cases to take, Quintilian states that since an advocate cannot undertake all the honorable cases, for there are too many, he should be swayed by the character of those who recommend litigants to him.¹²² In two letters of Fronto we clearly see how his friends became conduits to his legal influence. Fronto writes to his friend, Arrius Antoninus, who held the position of *iuridicus*, concerning the two cases of Baburiana and Volumnius Serenus, which appear to have been going before Arrius' court.¹²³ Fronto makes it clear that these cases were brought to his attention through his own friends.¹²⁴ It is possible that Baburiana and Volumnius – aware of Fronto's connection to Arrius – sought out friends of Fronto with the express purpose of gaining access to him.¹²⁵ Such examples show how "*amicorum causae*", "cases of friends" could become a large and extensive category with the potential almost to fill an advocate's caseload, since it could involve individuals quite far removed from the advocate's immediate circle of friends.

The evidence used in this discussion of friends' cases shows how easily one can be swayed by the very nature of the sources to focus on the social classes from which the majority of our ancient authors come. One question begs an answer: how far down the social ladder could an advocate be situated before the cases of friends and *clientes* no longer made up the majority of his caseload? The absence of evidence hinders any satisfactory response. There is not one piece of clear evidence showing an advocate of relatively modest status taking on the case of a friend.

Perhaps the question is unfair. Considering Roman society and the interwoven nature of city life, as well as the various forms that payment could take, it may be erroneous to assume that poverty would have necessitated an advocate's caseload be comprised of strangers' cases. Just because a poor advocate represented a poor friend does not mean that the advocate went unpaid.

Certainly what would have been considered valuable payment to an upper-class advocate and a lower-class advocate could have been very different. Still, lower-class advocates could have used symbolic capital in personally beneficial ways. The payment might, however, have been delayed, and if an advocate were living hand-to-mouth symbolic capital might have been viewed as rather unhelpful. At some point, moving down the social ladder, *clientes* would have disappeared from an advocate's caseload. Unfortunately, we cannot identify this dividing line, nor can we say much more.

* * *

Saller and Brunt have shown that patronage did not disappear as an institution when legislative and elective powers were removed from the people in the early imperial period.¹²⁶ So, among the upper-class advocates, at what point did friendship end and patronage begin? It is difficult to differentiate when an advocate undertook a case to be helpful to a friend from when he did so out of duty as a *patronus*.¹²⁷ Even from our extensive collection of Pliny's letters, it is difficult to draw such distinctions in his caseload. In only one instance, when Pliny undertook the case against the ex-magistrate Caecilius Classicus on behalf of the Baetici, can we be reasonably certain that Pliny served as counsel because of his position as their patron.¹²⁸ Aper describes Maternus' legal caseload: "*tot amicorum causae, tot coloniarum et municipiorum clientelae*", "all the cases of your friends and those of colonies and municipalities."¹²⁹ Unfortunately, Maternus, like so many others, does not fit all our criteria in that, while we know he was an advocate who lived in Rome, we cannot determine if he represented these colonies and municipalities because he was their patron.¹³⁰

The terminology associated with advocacy and patronage is so interwoven that limited insight can be gained from attempts to study the vocabulary.¹³¹ The use of the term *patronus* for an advocate suggests that the role was originally fulfilled by one's *patronus* in the early years of Rome's history. However, at some point *advocatus*, which had originally referred to a legal advisor, came to be a synonym.¹³² *Advocatus* appears already in the writings of Terence and Plautus to describe a pleader in court.¹³³ Livy used *patronus* and *advocatus* interchangeably in his writings.¹³⁴ During the imperial period the terminology of patronage also evolved. Saller suggests that while patronage remained an integral part of Roman society, the traditional terminology of *patronus* and *cliens* was rarely employed.¹³⁵ Instead, the Romans used words that emphasised their mutual affection, and thus turned to the vocabulary of *amicitia*.¹³⁶

We know of a case or two in which the relationship between the advocate and the client appears to be one of *patronus* and *cliens*. Scutarius is one example (discussed in Chapter Three), insisting that his patron Augustus be his representative in court.¹³⁷ From Cassius Dio's account it appears the man had served under Augustus on campaign, but this is not certain. The soldier may

have viewed all those in the army as *generally* under the patronage of Augustus, their leader, while no formal tie of patronage existed.¹³⁸ It also appears that Martial had a patronage relationship with an advocate. He tells us that he wished to bring cases against a number of individuals, and his advocate, Ponticus, fearing the influence of these people, refused to lay charges. Martial calls Ponticus "*dominus*", a seemingly inappropriate form of address if the relationship was solely professional.¹³⁹ In another epigram Martial tells us that he was refused the *sportula* – the reward for service provided by a patron – by Caecilianus because Martial absentmindedly called him by his *nomen* instead of "*dominus*". Clearly in this passage the relationship was one of patron and client. Furthermore, we sense that Martial felt restricted in his dealings with Ponticus, so why did he not just approach a different advocate? The assumption is that Ponticus was Martial's patron as well as his advocate. Altogether, determining whether a patronage relationship existed between two people *before* they became advocate and client, or whether the tie of indebtedness was created solely by the undertaking of a case, is extremely difficult.

Within Fronto's letters we learn that provincial bodies saw advocates in Rome as desirable potential patrons. In a letter unique among ancient documents, Fronto responds to the council of Cirta, which had asked him to propose some individuals whom they could approach to be patron of their town. This letter is invaluable for providing the criteria that towns should consider when choosing a patron: he should be well known in the town, he should be consular, and he should be a skilled advocate who can properly represent the town's interests.¹⁴⁰ Two of the three candidates Fronto proposes are known from other sources to have been advocates. Aufidius Victorinus, to whom Fronto's daughter was engaged, undertook the defence of one of Fronto's "*familiares*" (intimate friends).¹⁴¹ Postumius Festus, also a native of Africa, is commemorated as an orator in an inscription found in Rome.¹⁴² Fronto himself was patron of the town of Calama, near to his hometown of Cirta, and had assumed a patronage type of relationship with either specific communities in Cilicia or the province as a whole.¹⁴³ The frequency of litigation emanating from provinces against various provincial officials in Rome, and the example Pliny provides of representing two provincial clients on two occasions, surely allows us to conclude that provincial individuals actively sought out and maintained a constant relationship with capable advocates in Rome who would, as patrons, guard their interests, or those of their community or provincial assembly, in the courts of Rome.

Epigraphical evidence of patrons of communities and provinces encourages us to seek amongst the records for advocates known to have lived in Rome, thereby providing proof of patrons serving as advocates.¹⁴⁴ L. Fabius Severus is one of the few patrons we find in the inscriptional record whom we can likely place as an advocate in the city of Rome. From a long honorific inscription, the beginning of which is fragmentary, we learn that he argued many public cases

on behalf of the community of Tergeste (the inscription suggests the community was his hometown) before judges appointed by Antoninus Pius as well as before the emperor himself. The inscription as it survives does not refer to Fabius Severus as *patronus*. Nonetheless, the great length of the text, as well as its tone, strongly suggests that he was a patron; this information may have been contained in the lost fragments at the beginning of the inscription.¹⁴⁵

The popularity that such advocates could gain in the local community is charmingly described by Aper in the *Dialogus*:

*fama et laus cuius artis cum oratorum gloria comparanda
est? ... advenae ... et peregrini iam in municipiis et coloniis
suis auditos, cum primum urbem attigerunt, requirunt ac velut
agnoscere concupiscunt.*

The reputation and fame of what other profession can compare to the glory of oratory? ... Visitors ... and non-residents even, when they first step into the city ask about, and, as it were, are very eager to become acquainted with those whom they have heard about in their cities and colonies.¹⁴⁶

One can easily picture those grateful citizens of Tergeste searching out the house of Fabius Severus immediately upon their arrival in Rome.¹⁴⁷

Any attempt to identify advocates who served as patrons of communities and provinces immediately excludes the majority of advocates in the city of Rome. By definition, such patrons occupied the top levels of the Roman social hierarchy. While the wealthier and more politically connected advocates would have been sought out by provincial and city councils for more powerful representation, even lesser advocates had the opportunity to work with individuals who did not live in Rome. From Martial we learn one method by which advocates in Rome came into contact with such people. He remarks that, if he were to start a legal practice, he would gain the business of many merchants from his home province:

*Nam si falciferi defendere templa Tonantis
sollicitisque velim vendere verba reis,
plurimus Hispanas mittet mihi nauta metretas
et fiet vario sordidus aere sinus.*

For if I wished to defend the temple of the sickle-bearing Thunderer and sell words to worried defendants, many sailors would send Spanish casks to me and my pockets would be filled with a variety of coins.¹⁴⁸

In a world that lacked modern means of communication and advertising, how was a person to find an advocate in an unfamiliar town? Personal connections

through family members, friends, and acquaintances, perhaps even as distant as a far-flung relative of a fellow townsman, must have played a substantial role. Thus, Martial was able to identify the origins of many cases that would come his way. A provincial, worried over his case, would certainly have found comfort in an advocate who understood his home culture and language, and could explain the unfamiliar affairs of Rome in understandable terms.

Millar's examination of the vast number of cases from communities that went before the emperor's court indirectly suggests that a similarly vast number of advocates were representing these communities. Fabius Severus, mentioned above, represented his city of Tergeste on numerous occasions in the emperor's court.¹⁴⁹ An inscription from the town of Side praising one of its decurions states that while he was a member of its council the city was successful in all the cases it pleaded before the emperor:

... Ζηνοδοτος ἄγνός δίκαιος
 φιλόπολις συμφέρων
 τῇ πατρίδι ἐφ' οὗ πάσας τὰς
 δίκας ἢ πόλις ἐνίκησεν
 ἐπὶ τοῦ θειοτάτου
 Αὐτοκράτορος περὶ ὧν ...

... just and upright Zenodotus, lover of his city, useful to
 his homeland, while he was decurion, the city won all
 cases before the tribunal of the emperor ...¹⁵⁰

It would appear that in a year a city like Side could have had numerous cases going to the emperor's court.¹⁵¹ Surely the local communities could not have relied solely on their urban patrons to undertake all these cases. Perhaps the most important cases were entrusted to their patrons – the ones in which it was felt the influence and connections of a patron would play an important role. However, a good portion of perhaps more mundane litigation could have been more than adequately managed by advocates hired in the city, and likely those in charge of hiring would have attempted to find people from their home community or province with whom they felt more comfortable.¹⁵²

Thus far we have not considered advocates undertaking the cases of their family members. Surprisingly, within the prescriptive lists of cases advocates should take, those involving one's family are not mentioned. Quintilian's comment that an advocate's case will appear stronger if he can say that he took it out of duty to a friend or a relative is the only reference made to family.¹⁵³ Very few actual cases are even heard of in which an advocate represented a family member. How is this silence to be interpreted? The family was certainly the cornerstone of Roman society, so it seems impossible that advocates would not have used their specialized skills for family benefit; surely, representing a family member would have been just as important to advocates as

representing a friend. No obvious explanation presents itself. Even over the long years covered within his letters, Pliny does not once mention taking a relative's case. We must conclude that advocates did represent family, but that nothing is mentioned because it was simply assumed an advocate would take such cases. Humility may also have played a role. An advocate such as Pliny was expected to look after his family; to state in his letters that he did so would have been obvious and overly self-congratulatory. That so few third-party accounts mention advocates representing family may be due to nothing more than the quirky randomness of the sources that survive.

Private practice was but one method for an aspiring advocate to make a living. For those lacking independent wealth and completely reliant on cases, employment as *advocatus fisci* may have been particularly appealing. The first attestation of the title appears during the reign of Hadrian.¹⁵⁴ However, other sources show that the state was already hiring advocates to undertake financial cases before that time.¹⁵⁵ An *advocatus fisci* represented and defended the interests of both the *aerarium* and the *fiscus*, the treasury of Rome and the privy purse, in the courts of Rome. In an epigram considering advocacy as a profession, Martial proposes two ways he would make his living – as an independent advocate taking the cases of his Spanish compatriots, or as a state advocate where he would “*falciferi defendere templa Tonantis ...*”, “defend the temple of the sickle-bearing Thunderer ...”.¹⁵⁶ The “sickle-bearing Thunderer” refers to Saturn, the god whose temple housed the state treasury in the *Forum Romanum*. It is assumed, though we cannot prove it conclusively, that this office employed quite a large group of advocates; the financial issues of the state treasury no doubt guaranteed constant involvement in the various courts.

Pliny records a case undertaken by these advocates. A quaestor serving abroad had in his possession the salary of his secretary. The secretary died before receiving the pay, and the quaestor did not know what to do with the money. In Rome the secretary's heirs claimed the money; so, the matter went to court and the state's position was argued by advocates employed by the *aerarium*.¹⁵⁷

Like Martial, many men considering a career in advocacy were no doubt aware of its possible irregular nature and must have carefully weighed this option with its steady pay. The post may not, however, have been as respectable as private practice since the advocate was assigned cases rather than being reliant on his reputation or skill to attract clients.

We know the identities of two men who were *advocati fisci*. Quirinus, particularly gifted as a prosecutor, is known from Philostratus to have been an *advocatus fisci*.¹⁵⁸ Also from Philostratus, we learn that Heliodorus, a Celt, so impressed Caracalla that he was appointed head of the *advocati fisci*.¹⁵⁹ Other salaried positions, either within the state administration or with private corporations such as the various *collegia*, must also have been available to those interested in a more reliable form of employment. Perhaps the reason we do not know more of advocates in the middle wealth bracket is that they were employed in such jobs.

Factors in the refusal of cases

Inadequate evidence hinders examination of this topic; very rarely is there record of a specific case that an advocate refused to take. We do not hear of a single case that Asinius Pollio, Domitius Afer, or Fronto refused. We hear that Pliny refused to represent either side in a possible *repetundae* case involving the Baetici.¹⁶⁰ It is tempting to conclude that the refusal of cases was linked to the financial position of the advocate, that only those advocates with adequate resources could afford to be selective in the cases they undertook, while those working hard to drum up business did not have the luxury of turning any away.

Other factors were also at work. The status of the litigant and/or advocate on the opposing side could have induced even the wealthiest advocate to weigh his options. Pliny is asked to represent Corellia against the consul-elect, C. Caecilius. While explaining his reasons for taking the case, Pliny acknowledges that he factors in his relationship with Caecilius, and Caecilius' position:

*Est quidem mihi cum isto, contra quem me advocas, non
plane familiaris sed tamen amicitia. Accedit huc dignitas
hominis atque hic ipse cui destinatus est honor ...*

Indeed, while I may not be on intimate terms with this man,
against whom you ask me to act, nevertheless we are on
friendly terms. Added to this are the reputation of this man
and the office itself which he will be undertaking ...¹⁶¹

In a society where reputation and influence were seen not only as the public's perception of an individual but, more importantly, as an element of one's very identity and character, fear of offending the opposing litigant, or even those people connected to the litigant, was a serious consideration in deciding whether to take a case. This was not a concern only of advocates of Pliny's political status. Apparently Ponticus considered such issues, to the exasperation of his potential clients, one of whom was Martial.

*Lis mihi cum Balbo est, tu Balbum offendere non vis,
Pontice: cum Licino est, hic quoque magnus homo est.
vexat saepe meum Patrobas confinis agellum,
contra libertum Caesaris ire times.
abnegat et retinet nostrum Laronia servum,
respondes 'orba est, dives, anus, vidua.'
non bene, crede mihi, servo servitur amico:
sit liber, dominus qui volet esse meus.*

I have a lawsuit with Balbus, but you, Ponticus, do not wish to offend Balbus. I have a suit with Licinus, but he is also a big

man. Often my neighbour Patrobas disturbs my little bit of land, but you are scared to proceed against a freedman of Caesar. Laronia retains my slave and denies it and you say, "She is childless, rich, an old widow." It is not good, believe me, to serve a friend who is a slave himself. He must be free, who wishes to be my master.¹⁶²

Martial names three individuals whom he wishes to take to court, and one with whom he is already engaged in litigation. Ponticus' reasons for avoiding offending these individuals are varied. The first three have great influence and power of their own, and if they were to perceive Ponticus as a threat could easily make life uncomfortable in numerous ways that Ponticus wishes to avoid. The widow could retaliate passively; that Martial describes her as childless and rich suggests that Ponticus wished to ingratiate himself in the hopes of receiving a legacy in her will. We cannot say for certain that Martial was writing of specific, real cases in which he was involved. However, the perceived restrictions and pressures on an advocate surely were grounded in contemporary realities.

The advocate's own status also played a major role in determining whom he would willingly confront in court. Launching legal attacks upon one's social and political superiors was risky unless the case was so good as to make success very likely. I have previously mentioned how numerous men began their careers by bringing accusations in court. This was a game for the ambitious and unflinching; someone looking simply to make a living would have been wise to avoid taking on a bull too big to handle.

In their work on advocacy, Crook and Kelly both suggest that payment really did not stand in the way of litigants gaining adequate legal representation in the courts.¹⁶³ Evidence to support or reject this position is frustratingly slim and we are forced to fall back on inference. While theoretically it would seem that even the lowliest litigant could provide payment of value to even the wealthiest of advocates – such as by attending him in public (which would have been an investment of the litigant's time rather than his money) – the reality surely suggests that the quality of one's lawyer was relative to one's own standing. Like Martial, if one were attempting to go against one's superiors in court, it could have been rather difficult to find adequate representation. Could a poor client have offered anything that in practical terms a wealthy upper-class advocate would have deemed worth the effort put into the case? A wealthy advocate's profession served two functions: he was repaying favors he had received from others, and he was actively undertaking others' cases to make them indebted to him. Naturally, he would undertake those cases that promised the greatest gain. While the poor litigant could attend him in public, the influence of an indebted imperial freedman or agent with the ear of the emperor was of far greater value.¹⁶⁴ Thus, a poor litigant would have had to find an advocate of such standing

that what little he could offer as payment would have been considered valuable to the advocate. Such a search would most likely have resulted in an advocate from lower on the social scale.

Provincial and out-of-town advocates

Not all the advocates found in the courtrooms of Rome were residents of the city. Above, we have discussed possible occasions when litigants from out of town may have employed an advocate upon reaching the city. We also have evidence, however, that advocates accompanied their clients to Rome or came to the city on their own to represent their clients.

The evidence unsurprisingly places advocates from the provinces most often in the court of the emperor or the senate.¹⁶⁵ The problem when examining the participation of provincial advocates in the emperor's court is that it is often difficult to determine the advocate's exact role. Was he present merely as a member of a delegation or embassy, chosen by the provincials solely because he was an articulate speaker? Or does his presence prove that the hearing was not an embassy, but an actual legal hearing in which he had been chosen to represent the province or community?¹⁶⁶

Advocates came from numerous locations to argue cases in the emperor's court. In an honorific inscription, M. Gavius Gallicus of Attaleia is lauded for arguing a number of cases for his city, as well as others, before the court of the emperor.¹⁶⁷ An Ephesian advocate, of unknown name, acted as both delegate and advocate before the emperors Severus and Caracalla at Rome on several occasions, and on one occasion represented the whole *ethnos* of Asia.¹⁶⁸ Both of these individuals apparently travelled to Rome to undertake specific cases on behalf of their clients. That both also made repeat appearances is of further interest. Does this mean that cities or provincial councils had advocates "on the payroll" whom they would send, or only that these advocates were the leading practitioners at home and thus were repeatedly approached to undertake cases of importance to the whole community?¹⁶⁹ Since we find advocates working for the treasury, it is not a great leap to suggest that provincial councils or large communities also kept advocates on staff.¹⁷⁰

The above examples provide convincing evidence of provincials serving as advocates in Rome. While additional evidence is available, it is difficult in these cases to determine whether the advocate shared responsibility for arguing a case or served as a delegate (chosen specifically for his past courtroom experience), present to participate in whatever function(s) served the provincial interests – e.g. witness, litigant, or petitioner. Scopelian, who is described by Philostratus as having a level temper when in the courtroom, went to Rome on behalf of the entire province to petition Domitian to rescind the law concerning vine production in Asia.¹⁷¹ Unfortunately, we cannot determine Scopelian's actual function. Was he speaking as an ambassador or as an advocate representing a client? Philostratus also mentions Polemo, who was

chosen to represent Smyrna before the emperor concerning the city's temples and rights.¹⁷² Knowing that Philostratus had argued a court case for Sardis, we are again left wondering the exact nature of Polemo's role in this incident.¹⁷³ We know that he had written a speech for the Smyrna case. As Polemo died before he could complete the mission, the emperor asked that the speech be read, and based on it found the case in Smyrna's favor.¹⁷⁴

From such information, what conclusions can we draw? The problems encountered here perhaps indicate the unique nature of the courtroom of the emperor. He was not bound to follow specific rules of law or a mandate given to him by an overseeing praetor. In addition, his court could deal with practically every issue. Also, the environment may have been less formal and structured than that found in the other courts of Rome. That advocates appeared in this court on behalf of their cities and provinces suggests that the litigants or petitioners realised the importance of having a forceful speaker present their case; whether the matter took the actual form of a legal hearing *per se* is perhaps of little importance.¹⁷⁵ Conversely, the repercussions of not employing capable public speakers to present one's case or petition before the emperor could be disastrous. Philostratus tells the story of Heracleides who, in the midst of an *ex tempore* speech before Septimius Severus, broke down because he was intimidated by the court and the imperial bodyguard. Such a fumble must have hurt the success of the case. Philostratus excuses him because he was a sophist, not a forensic orator.¹⁷⁶ However, even the great Herodes Atticus is known to have broken down twice under the pressure of speaking before the emperor.¹⁷⁷

We can perhaps identify one occasion when an advocate considered taking a case for a litigant and going to Rome to argue it. Martial protests to a litigant, who has appeared early one morning at the doorway of his house in Spain, that he will not take his case. Since he had left Rome to get away from the hustle and bustle, he was not about to resume advocacy at that time.¹⁷⁸ While the epigram does not spell out that the case was in Rome, Martial's reference to the city twice suggests that the litigant wished him to take a case that had to be heard there. From the litigant's point of view, Martial was a prudent choice: he had argued at least one case before; he likely was a good public speaker, since he had obvious control of the Latin language and perhaps had given public readings; perhaps most importantly, he was comfortable with Rome, having lived there for many years, and would not have been disconcerted by arguing a case in the city's courts. Martial apparently was not so convinced.

As if our lack of information concerning provincial advocates were not frustrating enough, we know still less of advocates who came to Rome from other locations in Italy for specific cases. The *vadimonia* tablets surviving from Puteoli and Herculaneum show us only a small sample of the cases that must have been pouring into Rome from all over the peninsula, in addition to all the cases, year after year, from the empire as a whole.¹⁷⁹ Yet we do not

hear of any advocates from out of town. Above I proposed that litigants hired advocates once they arrived in the city, but I did not suggest this was the only option. We tend to forget that many members of the upper classes spent time in the country at estates near their hometowns; thus, advocates in Rome had connections through family, friends, even others who lived in the same town. The cost of travel, as well as the time involved in both travelling and possibly awaiting the actual hearing date, probably discouraged most litigants, even those of substantial means, from bringing their own representation from home. Perhaps these alternative methods of acquiring advocates in the city, in addition to the chance survival of our sources, help to account for this disappointing omission.

THE ADVOCATE'S ROLE OUTSIDE AND IN THE COURTROOM

There are two purposes to this chapter. Having formulated in the previous chapter an understanding of the types of cases that advocates accepted, we now must consider the impact that such an undertaking had on an advocate's life. In the first broad section, time is the hub to which the various topics connect, the central questions being how much time did an advocate allot for each case, and what activities made up his involvement? The second purpose of this chapter is to study specifically the advocate's participation during a case within the courtroom itself.

Time investment and workload

Quintilian describes a number of the standard activities an advocate must embark upon to prepare a case:

... in discendo rimari necessarium est, quae personae, quae tempora et loca, instituta, instrumenta, cetera, ex quibus non tantum illud, quod est artificiale probationis genus, colligi possit, sed qui metuendi testes, quomodo sint refellendi.

... it is necessary in learning [the case] to examine thoroughly the times and places, the customs and documents, and the rest, from which it is not only possible to reckon which are the artificial type of proof, but also [to know] which witnesses ought to be feared and how to refute them.¹

The conscientious advocate interviewed the litigant a number of times, to gain an understanding of the issues of the case. During these interviews the advocate also cross-examined his client to test both the true motives for the initiation of the case (if his client were the plaintiff or accuser) and the possible effectiveness of his client as a witness. Quintilian recommends that the advocate take notes of these interviews for future reference.²

The advocate also had to find, identify, and review all documents connected to the case for the obvious reasons of testing his client's veracity, and

assessing both the legality of the documents (i.e. intact seals, the proper number of witnesses present, etc.) and their value to the case as a whole.³ Witnesses also had to be carefully prepared, which the advocate did by testing each with various possible questions from the opposing counsel, and repeating this process on several occasions to insure the individual was consistent and convincing.⁴

Of the various elements involved in an advocate's preparation of a case, the composition of his speech receives the most attention in the ancient sources. This is somewhat misleading, considering the nature of a case. The speech was indeed the element over which the advocate had the most control, in that he could prepare it beforehand. Any advocate caught off guard in the courtroom by an unforeseen answer or a document that had escaped his knowledge would, however, have acknowledged that preparatory examination of the facts and materials, and preparation of the witnesses, were of at least equal, if not greater, importance.

If his client had arranged for more than one advocate to represent him, the advocate also had to meet with colleagues to determine each person's focus and role. Various sources, including Quintilian and Pliny the Younger, describe cases with anywhere from one to a sizeable group of advocates representing a litigant.⁵ Volusenus Catulus enlisted a formidable defence team: Domitius Afer, Crispus Passienus, and Decimus Laelius.⁶ Asinius Pollio and Messalla Corvinus, an equally powerful team, also together undertook the joint defence of apparently more than one nervous client.⁷ We also find a number of general references to litigants with multiple advocates.⁸ So many examples appear, in fact, that having multiple advocates was arguably quite common. There appears to be no tradition that certain types of cases called for more or fewer advocates.

We have only one hint of how a strategy meeting for multiple advocates might have appeared. In the *Dialogus* Vipstanus Messalla enters a room and finds Curiatius Maternus, Marcus Aper, and Julius Secundus gathered there. Noting their serious faces, he says, "*Num parum tempestivus ... interveni secretum consilium et causae alicuius meditationem tractantibus?*", "Did I come at a bad moment ... during a private consultation, a private meeting for those managing some case?"⁹ We can assume that such a gathering, therefore, resembled a meeting of advocates. Whether other features besides the identity of the men present and their serious faces indicated their purpose to Messalla we cannot tell.

The majority of advocates prepared their speeches in some written form. Here the practices of advocates varied from merely making rough notes of the general ideas to writing out the complete text. In Quintilian's day, the notebooks of Cicero were still extant as well as the notes of many others, either exactly as made by the advocate before the speech was given, or edited in book form.¹⁰ Cassius Severus, according to Seneca the Elder, wrote out almost the whole of each speech, and even went so far as to include opportunities for

wit.¹¹ Pliny mentions Regulus' habit of writing out his speeches in their entirety as well.¹² Quintilian suggests a mixed method; it is useful to write out the whole but, when one is defence counsel, it is far more effective to fashion the opening of one's speech from something said by the prosecuting counsel just finishing. This gives an *ex tempore* feel to the beginning, after which one can transition into the written portion.¹³ There were, of course, exceptions to the rule. Lucius Vinicius was known for never writing down a thing before he spoke.¹⁴ Those advocates working with many cases at any one time likely sought the middle ground. Quintilian indicates that many wrote out the necessary portions, especially the beginning of the speech, and thought out the rest as time permitted.¹⁵

Writing out the speech was the penultimate stage; Quintilian advises advocates to memorize the whole if time permits and if not, to memorize at least the main points and their order. He did allow that it would not be detrimental if the advocate used some sort of memory aid in the courtroom, such as a list of the main points.¹⁶

The length of speeches was naturally tied to the amount of time each side was allotted during the hearing. Over the course of the first century, the time permitted to a speaker appears to have dwindled. Both Aper and Maternus make comments in the *Dialogus* that the advocate was "*iam*" (now) being forced to finish his speech in a far shorter time than previously; according to Maternus the advocate was reduced to an hour or two at most.¹⁷ Quintilian, a contemporary, also acknowledges that the time available to the advocate is often short.¹⁸ This restriction can possibly be linked with what seems to have been a newly emerging case procedure, which called for the points of the case to be argued by each side, one by one; this dispensed entirely with the need for extended speeches by each advocate. Suetonius mentions that Nero followed this method of conducting cases, but it is unclear whether it first appeared during his reign or earlier.¹⁹ This procedure reappears many years later in a case involving the proconsul Lustricius Bruttianus and his *comes*, Montanius Atticinus, held in Trajan's court, which also followed this procedure, a method "*quo genere veritas statim ostenditur*", "by which the truth immediately is revealed" in Pliny's opinion.²⁰

Over the course of the first century the courts did on occasion get bogged down by cases for numerous reasons, both practical and political, and such adaptations could have helped alleviate the pressure.²¹ While the statements made by the ancient authors concerning the new procedure and restricted time allotments give no details, evidence suggests the reports are indicative of only some courts. The procedure followed in most public cases generally assigned six hours of speaking time to the prosecution, and nine to the defence. If the case was of particular complexity or importance these amounts could be increased, though the ratio of 2:3 tended to be maintained.²² Pliny writes of speaking for seven hours in the centumviral court on one occasion, and when sitting as judge he allowed unrestricted time to the advocates.²³

Martial, a contemporary of Tacitus and Pliny, also mentions long speeches in his writings. Poking fun at Caecilianus' longwinded speeches, Martial sympathizes with the *arbiter* who reluctantly gives Caecilianus the time of seven water clocks for his speech.²⁴ In another epigram, Martial attacks Cinna's failure to interrupt and harangue the opposing counsel's speech:

*Hoc agere est causas, hoc dicere, Cinna, diserte,
boris, Cinna, decem dicere verba novem?
sed modo clepsydras ingenti voce petisti
quattuor. o quantum, Cinna, tacere potes!*

Is this pleading cases, is this eloquent speaking, Cinna, to say nine words in ten hours? But now you, in an enormous voice, ask for four water clocks. O, how much you can *not* say!²⁵

At first reading it is tempting to believe that Martial is exaggerating how long the speech of Cinna's opponent was, to stress how little he had to say in it. However, Martial rarely takes his exaggerations to such extremes. A speech of ten hours, given Pliny's seven-hour speech, does not fall outside the realm of possibility.

Clearly not all speeches were becoming briefer, and it is perhaps significant that the two references to the new point-by-point procedure are found in the context of the emperor's court. In an earlier chapter we considered the vast number of cases coming to Rome and the emperor's court as the empire expanded. It is certainly easy to conceive that as decisions became more and more concentrated in the person of the emperor, some changes were necessary to accommodate the increased workload.²⁶

The surviving sources mention speeches ranging in length from one-half a water clock (seven–ten minutes) to seven hours, which calculates to approximately 30 to 40 water clocks.²⁷ Using modern equivalents and calculations from our ancient data, we know that it takes approximately two minutes to read at a comfortable pace one A4 (210 x 280 cm/8½ x 11 in) sheet of double-spaced type. Thus we end up with a range of seven-and-a-half to 300 pages. Preparation of a speech thus could require extensive time.

In addition, an advocate had to prepare his arguments for the *altercatio*, or debate portion, of the hearing as well as the questions he would ask to examine and cross-examine the various witnesses.²⁸ The speeches were followed by the reading of the documents pertinent to the case and the examination of the witnesses by both sides. Quintilian suggests that the advocate also attempt to prepare refutations to arguments he suspects his opponent will put forward.²⁹

An advocate also had to spend time maintaining and improving his physical abilities.³⁰ We hear little of how this was to be accomplished. Quintilian admits that the advocate is frequently too occupied with his job to have time to take walks, a common method of exercise.³¹ Describing his daily activity at

his summer home, Pliny mentions three walks, a drive in the carriage, and "taking exercise" in the course of one day.³² If he does not have time for a drive, he goes out on horseback; his exercise schedule does not change at his winter house.³³ Aulus Gellius appears to have followed a similar exercise regimen: "*Quando ab arbitriis negotiisque otium est et motandi corporis gratia aut spatiamur aut vectamur*", "When I have leisure from legal business, [I] walk or ride for the benefit of bodily exercise".³⁴ Beyond these examples, we must assume that the apparent silence of the sources indicates that advocates partook of the same standard physical exercise as other Romans.

In total, then, how much time did an advocate spend preparing any given case? Naturally, there is wide variation, depending to a large extent on the complexity of the case and the advocate's willingness to commit his time. Furthermore, the sources always speak of the extremes; looking for an average among these is impossible. Quintilian speaks of advocates who first met with a client the day before the court date, or even early in the morning of the day itself.³⁵ Scaurus apparently used to prepare his cases when he was dressing, or even on the courtroom benches.³⁶ It is difficult to determine how much of this is bravado, and such scant preparation time was certainly considered inadequate by both Seneca the Elder and Quintilian, the latter of whom calls these men "*negligentibus*" (negligent) and perverted by vanity.³⁷ Based on our examination of the various preparatory activities involved in a case, and considering the standard caseload for a productive advocate, we can suggest that an advocate could spend anywhere from one week to one year on preparation.

The type of case and the procedure followed for that specific case would have greatly affected the time required. Open-and-shut private cases involved a usual minimum of two hearings, which could be relatively short if the issue was simple, and held in quite quick succession if the parties involved agreed.³⁸ With that in mind, an advocate may have tried to complete his preparation for relatively simple cases even before the first hearing, since the second hearing could follow hard upon. In a case Gellius was appointed to judge, the consul ordered him to render a verdict before the *Kalends*, the first of the month, which suggests that the time between the first hearing and the verdict was going to be at most one month.³⁹ In important private suits and almost all public cases the litigants had much more at stake and the issues were more complicated. Thus, the advocate likely required more time to exhaust all avenues of examination. In public cases there would be a series of hearings and a specific period of time set for the collection of evidence, the *inquisitio*, which, based on republican evidence, could range from ten days to a year. It is possible that Augustus' legal reforms altered the allowable time, though public cases of various types were still receiving up to a year in the imperial period.⁴⁰ The length of time between the initial hearing and that in which the advocate would begin to present his case could be anywhere from approximately two to three weeks up to 13 to 14 months. Quintilian suggests that the advocate had a better chance of committing his speeches and arguments to writing beforehand in public cases because

he would have intervals of several days between the hearings.⁴¹ However, it must be remembered that the intricacies of such cases – gathering evidence, examining witnesses, possibly coordinating a team of advocates, and preparing long and detailed speeches – could easily consume much of that time. The location of the litigants, witnesses, and documents could also slow down the advocate's preparation. If all parties and evidence were in Rome, the advocate could organize his case quite quickly; otherwise, travel time became an issue, and could extend the advocate's preparation time as he waited for witnesses and documents to arrive.

The length of time the advocate needed to prepare his case was also affected by whether he was representing the prosecution/plaintiff or the defendant. Quintilian acknowledges that an advocate can far better prepare a case if he is attacking rather than defending. He knows what he wants to focus on and where he will lead the case.⁴² The defence counsel, however, has to respond and refute the opposition's points. This made preparation more difficult, and possibly longer, since the defence advocate had to prepare for all eventualities with a strong understanding of the facts and issues, in order to refute quickly and appropriately.

On occasion an advocate could be called upon to speak immediately on behalf of a client, at odd hours, with either very little or absolutely no time to prepare his thoughts. In the course of considering this possibility and how an advocate could best cope, Quintilian acknowledges that there were "*innumera-biles*" (many) occasions when it could occur.⁴³ Our information is such, however, that we do not have a clear understanding of what events could necessitate such immediate participation. Quintilian's choice of vocabulary when describing these sudden appearances provides some hints but nothing conclusive. An advocate could be called upon to speak immediately: "*apud magistratus*" (before the magistrates), "*in iudiciis*" (in the courts), "*in medio foro*" (in the middle of the forum), or "*repraesentatis iudiciis*" (at hearings convened suddenly).⁴⁴ While it is clear from these general examples that the venues were diverse, we have very little information on specific occasions of such immediacy. In the one such case of which we know, Fronto was summoned by one of his clients one evening after dinner to appear immediately in the court of the Praetorian Prefect, Marcius Turbo.⁴⁵ It is clear from Cassius Dio's account that the occasion was very sudden. However, Fronto likely was not entirely unprepared, since he seems to have been engaged by this client previous to that evening and we can therefore assume that he at least knew of the issues involved even if he had not completely prepared his case. The apparent inconsistency of Turbo's court hours is interesting. That Fronto makes a point of greeting Turbo with the evening salutation suggests that the latter's evening sessions were somewhat unusual in comparison to other magistrates.

A very likely occasion when advocates may have been forced to speak *ex tempore* before a magistrate was at preliminary hearings, the *in iure* portion of a private case. In the previous chapter, we considered the possibility of

litigants coming to Rome without an advocate and finding one upon arrival. When examining the locations of the courts we saw that the courts of magistrates, such as the *praetor urbanus* and the *praetor peregrinus*, may have been very impromptu and unorganised. It certainly would have been possible for a litigant and his advocate to be told suddenly to state the case when unprepared. We have already encountered Pompeius Auctus, who likely made his career speaking for clients before these magistrates in the Forum of Augustus with possibly little or no preparation time.⁴⁶

Even though an advocate might suddenly need to speak at a hearing without time to examine the witnesses or write his speech, Quintilian tells us that "*in iudiciis ac foro*", "in the courts and the forum", a "*breve tempus*", "brief time" was almost always provided for the advocate to become acquainted with the facts of the case. Quintilian also tells us, however, that there were rare occasions when even this time was not given.⁴⁷ His advice to an advocate caught in this nightmare: speak slowly and think on your feet. The style of purposeful deliberation will convey an air of deep thought and reflection; however, the advocate must make sure the impression is one of weighty consideration, not hesitation.⁴⁸

Having formed a general idea of how an advocate prepared for a case as well as the amount of time required, we must now ask how long an advocate spent in court itself for any given case. The evidence is less than ideal. However, we can identify numerous factors that could have affected the length of a case, and thus form some understanding of the advocate's investment of time within the courtroom.

The court calendar for the Roman year must first be briefly considered. During the late Republic, April and the early part of May marked a break for the senate and the law courts, a practice that likely continued into the imperial period.⁴⁹ Augustus added an additional two-month holiday in November and December, and so the court calendar was divided into two terms, the winter running from January to April and the summer running from mid-May to November.⁵⁰ Claudius adapted this calendar by removing one of the two holiday periods to make the court season continuous.⁵¹ Another passage from Suetonius suggests that Claudius in fact cancelled the April–May holiday: Galba, he says, "*concessum a Claudio beneficium, ne hieme initioque anni ad iudicandum evocarentur, eripuit*", "denied the gift given by Claudius of not being summoned for court in the winter and the beginning of the year".⁵² Clearly then, Claudius did not cancel the November/December holiday. But Suetonius' comments suggest that Claudius had also made changes to the winter break; at some point he extended it to include part or all of January and perhaps part or all of October, to compensate for removing the April–May break. We can thus propose that from some time during the reign of Claudius until that of Galba, the courts met continuously from late January/February until October. If we take Suetonius at his word we must conclude that Galba removed only the changes that Claudius made to the winter break since the

November/December break had been put in place by Augustus. Thus, from Galba's day, the courts met continuously from January until November.⁵³

This did not mean that all courts ran day in and day out during this ten-month period or that advocates could be in court any of these days. The evidence leaves us unsure of which courts took these holidays. The *quaestiones perpetuae* may have been the only ones so lucky; or the holidays may have applied to public courts, or to all public and private courts together. As cases were broken up into two or more hearings, there is also the possibility that some stages of the litigation process would continue into holidays while others would not.

To further complicate matters the individual days of the Roman calendar were categorized as *dies fasti*, *dies nefasti*, and *ludi*: days on which business could – or could not – take place, and days set aside for games. During the republican period at least some court activities could not take place on *dies nefasti* or *ludi*.⁵⁴ Over the course of the late republican and imperial periods, however, the holidays observed by the courts were gradually reduced because the number of available days was becoming quite inadequate to address the volume of legal business. On several occasions during the imperial period we hear of various emperors broadening the court calendar in an attempt to alleviate backlogs caused either by normal court business or because new legal rules caused a sudden influx of cases. Augustus apparently added 30 days, which previously had been taken up with games, to the court term and, in addition to cancelling one of the extended holiday periods, Claudius removed several individual vacation days.⁵⁵ By the reign of Marcus Aurelius, the number of days available to the courts had risen to 230 days per year.⁵⁶ It appears, therefore, that not long into the imperial period a festival or ill-omened day did not guarantee that legal business would halt.

Many officials also did not observe these holidays, due to either legal custom or personal choice. It appears, for example, that the praetor could be approached on holidays.⁵⁷ Both Claudius and Septimius Severus apparently heard cases on days of festivals or ill-omen.⁵⁸ Dio states that Severus would forego court only for a great festival.⁵⁹ Concerning private cases, it appears that if all the parties involved – obviously including advocates – agreed the case could be heard on any chosen day.⁶⁰

Irregular cancellations could also affect the day-to-day court schedule. In 6 the courts were recessed due to a serious famine.⁶¹ In July/August of 37 Gaius closed the courts to guarantee that the public would attend the theaters.⁶² The death of an emperor or member of the imperial family would also result in sudden closures.⁶³ We also know that at least some court activities were suspended for the public funeral of the *praefectus urbi* L. Volusius Saturninus, who died in office in 56.⁶⁴ Such cancellations could easily have disrupted an advocate's overall workload if he had several cases scheduled for the coming days and weeks, and suddenly one or several were pushed back due to court cancellations.

Some periods of the ten-month session seem to have been busier than others, and we can assume that factors ranging from the yearly flow of business

and trade to the weather (many of the upper class abandoned the city during the summer heat) must have affected an advocate's monthly workload. July appears to have been a normally quiet month in the courts. Pliny tells us that he scheduled a public reading during that month on the assumption he would not be called to court, only to be summoned unexpectedly.⁶⁵ The heat could no doubt have made it uncomfortable; Claudius' overzealousness for judging cases is satirized by his willingness to hear cases in July.⁶⁶ Juvenal condemns an advocate for wearing transparent chiffon in court, to which the advocate responds, "*sed Iulius ardet, aestuo*", "but July is hot, I'm boiling".⁶⁷

At the other end of the spectrum Pliny comments that he often had cases pending in the winter.⁶⁸ This statement certainly rings true of Pliny's involvement in *repetundae* cases, which notably all came to trial in the winter. This was a result of the typical procedure. Governors usually returned from their provinces by the end of the summer, and provinces who felt wronged by their exiting governor likely laid charges sometime in the fall, no doubt eager once they were safe from retaliation. A letter of Pliny supports this sequence of events. Writing to a friend, he reports that he has recently refused to act for both the province of Baetica and the charged ex-governor, and then remarks that he will be back in Rome by the middle of October. From this we can conclude that the two parties to the dispute were seeking representation some time in September or the early days of October. With the option of taking up to a year to gather witnesses and evidence, such a trial could have begun as late as the fall of the next year.⁶⁹

Looking at the court calendar from the perspective of an advocate, however, one quickly realizes that very few days were guaranteed to be free of legal business. Thus, if involved in private cases – which likely constituted the majority of an advocate's activities, unless he specialized in public cases – an advocate could find himself before a magistrate or court virtually on any day.

* * *

The amount of time within the courtroom that an advocate had to dedicate to any specific case (which could involve both preliminary hearings and the full hearing of the case itself) also varied. All preliminary hearings, whether for private or public cases, ideally involved the advocate's appearance and then, of course, the full hearing of the case demanded still more courtroom time. Little is known of what actually occurred at the *in iure* portions of private cases and so it is difficult to determine how much of the advocate's time would have been required then, but the advocate likely would have been present and involved, since Quintilian gives specific advice for this setting.⁷⁰ The various preliminary hearings for public cases also involved multiple court appearances by the advocate. Unfortunately, the absence of detailed accounts of private cases, beyond the reports of Gellius we have already discussed, means that the amount of courtroom time most cases required must be reconstructed from meagre sources.

We have some information concerning the length of legal hearings in three courts, those of the *praefectus urbi*, the emperor, and the *centumviri*. In one of his satires Juvenal urges his reader to attend the court of the *praefectus urbi* for a few days if he wants to put his own troubles in perspective.⁷¹ The sense of the passage is clear, that in the course of a few days this court would hear a number of different cases. While some of these may have come through this court in a preliminary stage, we know from Pliny and Tacitus that cases could be heard there entirely as well.⁷² Pliny describes his participation as an assessor for one case and the tone of the letter suggests that the matter was concluded in a day.⁷³

The length of hearings in the court of the emperor varied widely. At Centum Cellae, Trajan and his assessors, one of whom was Pliny, heard two cases in two days. A third matter was supposed to be heard on the third day, but not all the litigants appeared so Trajan postponed the matter to a later date.⁷⁴ We find the other extreme in the court of Marcus Aurelius. According to Dio, Marcus Aurelius would often spend 11 or 12 days trying a case, in an effort to ensure strict justice. Dio mentions his participation in the preliminary hearings as well, so conceivably, the number of days reported may have included those hearings.⁷⁵ If this genuinely was Marcus Aurelius' regular practice, we must conclude that he in fact heard a very small number of cases.

The centumviral court apparently met on alternating days during a case. On one occasion Pliny went to hear the speech of his co-counsel in an ongoing case before this court. He was scheduled to speak on the next court day and his language implies that it was going to be two days later, rather than the next day, and that this was customary.⁷⁶ It is thus clear that centumviral court cases, if not completed in one day – probably a very rare event, since the court dealt primarily with thorny inheritance issues – would extend over at least three days with a day off in the middle that could be used for preparation, and likely continued to alternate in this way until the case was closed.

To estimate the number of court days needed for a full hearing of a public case after the preliminary hearing, we must look to our understanding of the procedure followed in the *quaestiones perpetuae*. As mentioned above, six and nine hours respectively were allotted to the prosecution and the defence for presenting their speeches, which thus most likely occupied two full days of the court's time, though it must be remembered that in complicated cases the assigned times could be extended. The speeches were followed by presentation of the evidence, which included both the reading out of any relevant documents and the examining of witnesses. These portions of the trial had no time restrictions, and no doubt in a case of importance required a number of days. Such investment of time is certainly found in *repetundae* and *maiestas* cases recorded by Tacitus and Pliny.⁷⁷ While we cannot rely heavily on this information, since the cases were held in the senate, and therefore were of an even more exceptional nature, it is not extreme to conclude that some similarity existed between the length of these full hearings and those of the *quaestiones*, where *repetundae* cases were originally heard.

It thus appears that the amount of time an advocate would have spent in the courtroom for each case varied widely. If he were representing his client in a preliminary hearing before a city magistrate, he might have dedicated just a very small part of his day to that case. At the other extreme, in hearings before the *quaestiones perpetuae* the advocate might have spent anywhere from perhaps seven to 20 or more days in court.

In the foregoing I have assumed that by calculating the number of days it took to hear a case from beginning to end it is possible to determine the number of days an advocate spent in court for that case. Evidence suggests, however, that such an assumption must be qualified. Litigants often had teams of advocates representing them, and we do hear of such groups being within the courtroom.⁷⁸ But were all the advocates physically present for the entire case? Perhaps not. It appears that some developed their skills to become experts in specific types of speeches. Albucius Silus when involved in a case only gave the *peroratio*, the closing speech.⁷⁹ Quintilian was known as an exposition expert, which meant he was particularly good at setting out the various facts of a case.⁸⁰ Having completed their specific presentations, these advocates apparently did not feel compelled to remain in the court while the other advocates spoke, but rather immediately left the court.⁸¹ Above we saw that Pliny was not at his client's side for at least one day of his case in the centumviral court, since Pliny notes that he went to the centumviral court to hear the speech of his co-counsel. The tone of the letter clearly suggests that Pliny was in the courtroom solely as a member of the audience, and that he did not sit on the advocates' benches. We must assume, therefore, that the advocate speaking that day was indeed Pliny's co-counsel because had Pliny been the first to speak for the opposing side, he most likely would have been on the benches, since his speech had to directly respond to that of his opponent. His more relaxed attendance suggests he was there simply to hear what his colleague was saying so as to guarantee no unnecessary repetition.⁸²

This behavior may seem to us highly counterintuitive. A team of particularly skilled and famous advocates lined up on a bench or two surely would have made an impact, in a society where public appearances played an important role in advertising one's influence and alliances. It is tempting to assume that at least the "lead" advocate would have been present for the whole but, again, we have no direct evidence. Practicality seems to have outweighed the visual impact of such a group display. Appearing only to make his specific speech meant that an advocate could participate in several other cases at the same time. We certainly must take this angle on Cassius Severus' practice of delivering two private or one public speech per day. It may also have been common practice for all of the advocates slated to speak for a specific litigant to appear in the courtroom, on the benches surrounding the litigant, at the very beginning of the case, which seems to be the occasion Pliny describes concerning Attia Viriola's case, and then in subsequent meetings of that court only to appear when it was one's turn to speak.

While the evidence does not allow for exact calculations of the hours an advocate put in for each case, we are certainly left with the impression that his investment of time in a case could range widely from perhaps a week to over a year. He had to prepare the case and argue it through various stages and perhaps numerous postponements.⁸³ Fronto, for instance, was involved in an exceedingly drawn-out case before the emperor's court. In the extant fragments of his speech he describes with great vexation the excuses one of the litigants kept providing for why he could not get to Rome from Asia: the winter sea, the equinoctial gales, the brutally hot summer, his seasickness, and the coincidence of fall harvest season. The case was postponed, and then postponed again for a subsequent two months. Fronto's speech appears to have been delivered at the hearing after the two-month delay, and the non-appearance of the other party.⁸⁴ It would appear that similar such experiences were common enough to inspire satire. Juvenal tells us that delays were becoming so excessive that litigation was exasperating:

*sed tum quoque mille ferenda
taedia, mille morae; totiens subsellia tantum
sternuntur, iam facundo ponente lacernas
Caedicio et Fusco iam micturiente parati
digredimur, lentaque fori pugnamus barena.*

And even then a thousand wearinesses and a thousand delays have to be endured; so often [we are] prepared, the benches are just about set out, now eloquent Caedicius lays down his mantle, now Fuscus goes to urinate, [but] we adjourn, we fight leisurely battles in the forum.⁸⁵

Frustration could ensue, and advocates did, on occasion, express the feeling that some cases ate away more days than was warranted.⁸⁶ Martial calls Gargilianus mad, because he had been pressing the same lawsuit in the courts for twenty winters.⁸⁷ We hope this is humour through hyperbole. If not (and Martial does not tend to exaggerate unduly), then an advocate certainly had to be accepting cases with his eyes open to the possible length of his commitment.

It is possible to step back from the individual cases that advocates undertook, to construct a picture of their daily activities in Rome. One cautionary note must be issued: advocates' motivations for arguing cases were variable, therefore much depends on whether the individual saw advocacy as a serious career or as a hobby. Did he have what we would call a "practice", or did he take cases only for friends who approached him? An advocate's ability was also a factor. If he was a good speaker, his circle of "friends" could quickly expand, and suddenly he could find himself with a practice. The workload for an advocate among the lower classes could also vary greatly according to his ability and availability. We have seen, however, a number of relatively low-status

advocates with thriving practices. The discussion that follows will assume an advocate with a favorable professional reputation and consequently a practice.

The workday

The time of day most often associated with legal activity was between the third and fifth hours (approximately 9–11am), which we can designate as the peak period of the court day.⁸⁸ Of the seven extant *vadimonia* (bail) tablets that name a time for the disputing litigants to meet in the Forum of Augustus, all but one specify either the third, fourth, or fifth hour.⁸⁹ The third hour was chosen most often.⁹⁰ Martial likewise links this period with the courts in his description of the typical day:

*Prima salutantes atque altera conerit hora,
exercent raucos tertia causidicos,
in quintam varios extendit Roma labores,
sexta quies lassus, septima finis erit ...*

The first and second hours tire well-wishers,
the third employs hoarse advocates,
Rome extends the varied labours into the fifth,
the sixth will be rest to the weary, the seventh, the end ...⁹¹

In Horace's account of being caught by a bothersome acquaintance in the *Forum Romanum*, the acquaintance is contemplating not showing up at his hearing. In actuality, he was likely considering jumping his bail, the result of not meeting the criteria of a *vadimonium*. He comes across Horace at the beginning of the fourth hour, and during their discussion his opponent spots him; no doubt the opponent had already been to the meeting place agreed upon in the *vadimonium* and was hunting about for the recalcitrant.⁹² Martial also speaks specifically of *vadimonia* set for the fourth hour, when he complains of how a sycophant, hoping to gain a dinner invitation, arrives far too early "*cum modo distulerint raucae vadimonia quartae*", "when they only just adjourned the *vadimonia* of the hoarse fourth hour".⁹³

Although Martial's description may give the impression that the courts opened only in the third hour, it is more likely that they opened at dawn, considering the time at which standard public business commenced. While the majority of the *vadimonia* appoint the third hour, one *vadimonium* indicates the second.⁹⁴ The terms of *vadimonia* could be fulfilled even if the courts of the praetors were not open; the two parties fulfilled the agreement merely by appearing before each other. However, surely people chose times for their *vadimonia* at which they believed it would be possible, after meeting each other, to immediately approach the necessary court with their business. The *vadimonium* set for the second hour, if interpreted this way, thus suggests that

typically the courts were open before or on the second hour. Furthermore, we must remember that *vadimonia* are connected only with the courts of the praetors. As the various courts together made up the legal branch of Roman government it is likely that some effort was taken to standardize the hours of their workday, both amongst themselves and with the other branches of government. The senate is one such comparable body and the evidence suggests that they began their meetings at dawn.⁹⁵

The closing times of the courts varied more widely. Martial gives both the end of the fifth and of the tenth hour as the close of judicial activities in the *fora*.⁹⁶ How to reconcile such a wide variation? It may be that the various courts in the three *fora*, while beginning at more or less the same hour, set their closing times individually, depending on their particular procedures, the current volume of business, or the zealotry of the presiding magistrate or judge.

The *quaestiones perpetuae*, with set maxima of six and nine hours for speeches, might have varied their closing hour according to where they were in a specific case and the mood of the judges on any given day. If the prosecution finished speaking at the end of the seventh hour and there was only an hour or two of daylight left, the presiding magistrate would likely have closed the hearing for the day, with the defence beginning fresh at the next meeting. Philippus, whom Horace describes as "*causis ... agendis clarus*", "famous for pleading cases", perhaps had been just so dismissed when Horace tells us that, returning from the Forum at the eighth hour, he had already finished for the day.⁹⁷

The *praefectus urbi* evidently had a longer day. Juvenal describes his court as running "*a lucifero donec lux occidat*", "from dawn until dusk" though again we must be careful to allow for some exaggeration on the satirist's part.⁹⁸ Talbert, in his study on the possible length of a court day in the senate, provides calculations for the amount of daylight Rome received throughout the year. Natural light would have allowed the *praefectus urbi* to hold court for periods varying from approximately nine modern hours in January to 15 hours in June.⁹⁹ Magistrates, like the senate, did not even need daylight. We have already discussed the occasion when Fronto spoke before the *praefectus praetorio* after dinner one evening; Cassius Dio's comment that Fronto was returning from dinner "*ἑσπέρας ... βαθείας*", "in the very late evening" suggests that darkness had already fallen.¹⁰⁰

The *praetor urbanus* and *praetor peregrinus*, like the *praefectus urbi* and the *praefectus praetorio*, probably put in long days as well. Since a great deal of the preliminary work of a dispute funnelled through the praetors before the cases were assigned to the appropriate court, the pressure on these magistrates to prevent their courts from becoming bottlenecked likely forced them to make the most of every available day. Since their involvement in a case did not include elements requiring blocks of time (like the hours assigned to prosecuting and defence counsel), but rather consisted of far more interactive discussion, it is probable that the praetors ran through as many cases as possible within the business day.

Two pieces of evidence suggest that the praetors' courts were open until at least the tenth hour on occasion. Martial's fan, Pompeius Auctus, the "ambulance-chasing" advocate already discussed who spent his day in the Forum of Augustus picking up cases, is described by Martial as being tied up with work until the tenth hour.¹⁰¹ This corresponds nicely with a document from the *Tabulae Sulpiciorum*, which refers to a *vadimonium* that set a meeting for the ninth hour.¹⁰²

Emperors not surprisingly appear to have managed their court schedules in a wide variety of ways. Septimius Severus had a rather short court day, according to one report hearing cases in the morning until noon.¹⁰³ Marcus Aurelius, on the other hand, apparently heard cases until the eleventh hour when he was still only Caesar, and during the night as well when he was emperor.¹⁰⁴ The hours of operation of the imperial court were entirely at the emperor's discretion and, we must assume, depended greatly on the degree of duty any specific emperor felt toward the smooth running of the legal system.

One category of court perhaps felt less pressure to begin its day at dawn. The *unus iudex*, the single judge, appointed by the praetor to hear specific cases, was free to set the time of the hearing by agreement with the parties to the dispute and we can assume that they chose times that worked specifically for them. If the morning did not work for one party, they could meet in the afternoon or evening.

* * *

Let us return to our advocate. His workday then started at dawn with the arrival of clients and well-wishers.¹⁰⁵ This custom was certainly not restricted to the homes of advocates, but was a general feature at the homes of all with some public influence.¹⁰⁶ Martial and Maternus both mention clients who wake their advocates in the morning, some even with pre-dawn greetings.¹⁰⁷ These clients were wise, since the advocate might have been appearing at some court that commenced at dawn. Those litigants eager to lay charges were probably at the appropriate court as soon as it opened. Thus, we can explain Pliny's sudden departure to represent a client on the morning of his planned reading.¹⁰⁸ The rest of the advocate's day up to the ninth or tenth hour, if not even later, could find him within the courtroom. If he did not have cases requiring his presence in court he no doubt spent the hours preparing upcoming cases. While the majority of courts might not have met during the evenings, the advocate likely also spent time then preparing and reviewing. Pliny's description of his average winter day included an evening going over upcoming cases.¹⁰⁹ Martial tells his epigrams to seek Pliny only late at night, after he has finished his legal work.¹¹⁰ We must assume then that each day involved a different mix of courtroom appearances and preparation at home, resulting in an irregular schedule. With each type of court requiring a different number of preliminary hearings, and each case demanding variable

amounts of time for preparation – not to mention numerous potential delays – the advocate's daily activities would have varied constantly, depending upon the number and nature of the cases he was handling at the time.

Total workload

The overall caseload of any given advocate no doubt varied according to his abilities; we must assume that our evidence, by its very nature, largely records successful men or, in some extreme cases, quite the opposite. It is already clear enough that a career in advocacy could claim most of one's waking hours. At one point in the *Institutio Oratoria*, Quintilian describes advocacy as a profession in which every minute was taken up with the affairs of others.¹¹¹ Martial complains to his advocate friend that every time he comes to visit, the friend is either not at home or busy with his cases.¹¹² This sounds very similar to his description of Pliny as one who spent his whole day with cases.¹¹³ We must allow for some embellishment in these reports, but nevertheless the impression remains of days primarily consumed by work. Both Quintilian and Aulus Gellius lament that practising advocates rarely have the time even to take a walk.¹¹⁴ As we saw earlier, many advocates were so busy that they were forced to compress their preparation time by writing out only sections of their speeches.¹¹⁵

We have very little specific information for the workloads of any individual advocates. By chance, however, Seneca the Elder tells us the work schedule of Cassius Severus, a well-known advocate of the early Empire. He would give two private speeches daily, one before noon and one after, or one public speech.¹¹⁶ Even though his participation was likely limited to providing a specialized speech rather than having charge of the whole case, these numbers mean that in two days he could have spoken in up to four cases. Quintilian, very much in passing, suggests this was not so unusual since he says advocates often spoke in several cases in succession.¹¹⁷

Interpreting these comments of Seneca and Quintilian requires some care. How did Cassius Severus manage to prepare for each case if he was following this type of schedule for several two-day stretches in succession – something that Seneca seems to imply? Such steady participation would have required a large amount of preparation time. Cassius Severus, however, did have a reputation (which is mentioned in the *Dialogus*) for not always preparing his speeches as thoroughly as his colleagues did.¹¹⁸ The logistical considerations prompted by Quintilian's statement also leave one wondering how Cassius managed to arrange the court schedules to accommodate his participation in all these cases. Such active involvement would have necessitated not only a great deal of organization on Cassius' part, but also some flexibility from the courts.

The advocate in the courtroom

For a man to argue a case before a court successfully he must possess several skills, which Quintilian lays out in great detail for aspiring advocates. Indeed, without his extensive comments on these aspects, we would be woefully ill-informed, as no other source contains an equivalent level of detail. The very existence of a work such as the *Institutio Oratoria* is an indication of advocacy's development into a profession, since it implies that common ideas were, to a certain extent, held on what could be expected, perhaps even demanded, of a proper advocate. Furthermore, we can conclude that many gestures and movements recorded by Quintilian were widely used and made up part of a standard repertoire.¹¹⁹ A handbook, by its very existence, suggests a degree of uniformity among practitioners.

At the same time we must bear in mind an awareness of Quintilian's own motives for writing this work. Winterbottom is surely right to suggest that Quintilian was writing in reaction to numerous changes in oratory occurring during his day.¹²⁰ Thus, we must be aware that the *Institutio Oratoria*, while clearly reflecting the overall reality of his period, may on some points be promoting what he would like to see, rather than what was currently held and practised.¹²¹ Quintilian seems particularly intent on arguing against two points. One was the theory that rhetoric was a natural skill and, therefore, it was unnecessary to engage in extensive study as preparation for the law courts.¹²² Connected to this new attitude was a tendency among some speakers toward a style of speech that was easy and attractive to the audience, at the cost of the client's case – a trend Quintilian deplored.¹²³ This is not to suggest that we must weigh his work for political spin as carefully as we do Tacitus'. Rather, we must acknowledge that Quintilian wishes to set the ideal advocate as the standard – a standard that perhaps few, if any, real advocates did or could attain. Yet although he describes the ideal advocate, the *Institutio Oratoria* still provides us with a detailed description of the various skills involved in arguing a case and, through many passing remarks, provides glimpses of the real circumstances of the courtroom in his own time.

The advocate needed to have certain natural physical abilities. Quintilian is quick to say, however, that the gift need only be good enough to serve as a foundation for training.¹²⁴ General good health was the most basic and critical.¹²⁵ In addition, an advocate needed a good voice, authoritative and of good pitch. To back it up, good lungs were also vital; a weak voice was absolutely unacceptable.¹²⁶ Two other essential innate traits were a generally pleasing appearance and physical grace.¹²⁷ These gifts were of great importance to all aspects of the advocate's presentation and, if entirely absent, impossible to import. The voice, if at least adequate, could be improved with training, as could one's physical grace, to a certain extent. However, an advocate's face and body could hardly be transformed. Quintilian sums up the importance of these natural qualities by

saying that all are of such importance that alone, they can give a speaker the reputation of being talented.¹²⁸

The list of requirements becomes far longer when considering the skills that an advocate must develop to be an effective speaker. He needs a good imagination, and the ability to adapt and improvise under pressure. He must have wit.¹²⁹ His knowledge, obtained by study, must extend to vocabulary, linear geometry, and civil law, as well as the customs and religions of the Roman state.¹³⁰ The advocate must also develop an excellent memory – one of the most important required skills.¹³¹ Acting ability was also necessary. However, Quintilian makes it very clear – by repeated statements throughout his work – that the performance skills of advocates differed from those of stage actors. Clearly he was attempting to distance advocates from a profession considered very low on the social scale, and lacking in respectability.¹³²

The advocate's weapons

Within the courtroom the advocate needed an impressive arsenal to convince those sitting in judgment. It was not enough just to speak loudly, look people in the eye, and sound convincing. This was far too simplistic. The timbre of his voice, the movements and expressions of his eyebrows, eyes, hands, and body as a whole, all played a role in sweeping those present in the courtroom along the path to the advocate's intended conclusion. It was certainly not any easy job. The above chapters have shown that those in the courtroom – the judge(s), litigants, and audience – all approached the courtroom with very different backgrounds, motives, and expectations, and the advocate had to attempt to juggle them all in his quest for success. The importance of the advocate's tools in achieving his goal is made very apparent by Quintilian's dedication of a substantial portion of the *Institutio* to the detailed examination of the weapons available to the advocate, and only through understanding the intricacies of delivery can we possibly comprehend the pressure an advocate must have felt while presenting his case.

The advocate's voice, a critical element of his repertoire, required a blend of evenness and variety in tone.¹³³ In accordance with the nature of the subject and mood, the tone should alter as both the subject and mood change.¹³⁴ He must, for example, adopt an authoritative tone when giving advice. The voice must betray excitement to mark the rise of anger and the onset of pathos.¹³⁵ Emotions could also be portrayed by varying the delivery speed. A slower pace would imbue one's words with greater emotional power, although one should avoid excessive slowness.¹³⁶ Breathing was also very important. Quintilian says the advocate should not breathe so often as to break up his sentences.¹³⁷

At the same time, the advocate could be working in a crowded, noisy courtroom. Thus, he had to have a strong voice and needed to pitch it to carry as far as possible; the satirists frequently refer to the loud, booming voices of advocates.¹³⁸ Courtrooms could be very challenging in this regard. Our

examination of the standard courtroom suggested that it was constantly filled with noise, making audibility even more difficult. We hear of people in the audience murmuring and shouting during the advocate's speech.¹³⁹ One speech by Domitius Afer was interrupted by shouts from the companions of the opposing litigant.¹⁴⁰ The advocate had also to speak through the taunts, contradictions, and interruptions that opposing counsel regularly cast in his direction as well as toward the judge(s).¹⁴¹ Quintilian states that on occasion there could, in fact, be many people all shouting at the judge(s) at once.¹⁴² In circumstances where various courts were held within the same space, such as the *quaestiones* in the Forum of Augustus or the centumviral court in the Basilica Iulia, and noise could travel between courts, Quintilian concludes an advocate is very happy if he can be heard by his own court.¹⁴³ Speaking before one of the tribunals of the centumviral court, Domitius Afer was forced to stop repeatedly during his speech because of loud applause in the neighboring court.¹⁴⁴ The tale of Galerius Trachalus being heard by all four tribunals, though he was speaking only before one, is told by Quintilian to showcase his extraordinary ability to drown out everything else.¹⁴⁵ Clearly, a robust and indefatigable voice was an absolute necessity.

In Pliny's opinion, the advocate's two chief aids to the effective delivery of a forensic speech were his hands and his eyes.¹⁴⁶ Fronto, too, believed the eyes to be important.¹⁴⁷ During a speech, the eyes were not to be fixed on the ground, nor ever closed.¹⁴⁸ They could be particularly effective in adding impact to facial expressions, since they reveal the temper of the mind and are able to show merriment and grief motionlessly.¹⁴⁹ At all costs, the eyes were never to be moved constantly or rolled. Quintilian states that such over-activity made the advocate a laughing stock.¹⁵⁰ It was best if the eyes followed the motion of the current gesture, except when indicating abhorrence; this latter gesture required the arms to be thrust away from the direction in which the eyes looked.¹⁵¹

Appropriate accompanying gestures were critical to the delivery of an effective speech.¹⁵² For that reason, they receive a great deal of attention in Quintilian's work, which in fact discusses everything from feet to lips and eyebrows in great detail.¹⁵³ According to Quintilian, for example, it was detrimental for the eyebrows to be still at all times; however, it was equally damaging if they moved constantly. The eyebrows were required to participate in the formation of a countenance for many specific gestures. When displaying anger, the brows were to be contracted; depressed brows indicated sorrow, brows lifted upwards indicated happiness. Furthermore, one could indicate consent or refusal by the lifting or lowering of the eyebrows.¹⁵⁴ Even the tilt of the head had implied meaning. The head should rest erect since if drooped it suggested too much humility, or if thrown back it suggested arrogance, and inclined to one side gave the impression of languor.¹⁵⁵ Different movements of the head – which Quintilian says were well known and common to all – expressed consent, refusal, modesty, hesitation, astonishment, and indignation.¹⁵⁶ While we today are familiar with the common head

movements to indicate consent and refusal (nodding and shaking), we are ignorant of how the other four expressions were indicated.

The greatest attention was given to gestures formed by a combination of hands and facial expression. Quintilian explains that the hands could almost speak while the other parts of the body assist. Through their movements, the hands could request, promise, summon, dismiss, threaten, entreat, question, and deny.¹⁵⁷ The concentration of formulated gestures during a speech was apparently very high, Quintilian suggesting one gesture for approximately every three words. He even describes which gestures Cicero would have used, by quoting a passage from him and telling us when he would have changed the gesture (which is also described).¹⁵⁸ With such a high concentration of gestures, it is not surprising that some advocates when writing their speeches, at the same time thought out all the gestures they planned to use.¹⁵⁹ Gestures involved a complicated mixture of not only the bodily elements already mentioned, but also the detailed arrangement of the fingers in different combinations, the angle of the hand, and where it was stationed in relation to the body. The right arm was used most, while the left remained virtually motionless except for specific large gestures.¹⁶⁰ These gestures have been examined in some detail in the works of Maier-Eichhorn and, more recently, of Aldrete, so they will not be reconsidered in detail here.¹⁶¹

A couple of examples will suffice to give an idea of the style of particularly common gestures. Touching the middle finger to the thumb and then extending the other three fingers was a standard gesture. In the *exordium* portion of the speech, this finger arrangement could be combined with moving the hand forward, away from the body, with a gentle motion and slightly both to the right and left. At the same time the head and shoulders followed the direction of the gesture. The same gesture could be used in the *narratio*, the speciality speech of Quintilian. However, then the hand had to be moved with firmness and extended a little further away from the body.¹⁶² A slightly more expressive gesture could accompany a passage that was continuous and flowing in style. This gesture involved extending the arm, with one's shoulders back, and opening the fingers as the hand moved forward. When one wanted to give the words an especially splendid emphasis, this same gesture could be used; however, the arm was stretched out in a wide and extensive movement, which would give the impression that the words were expanding as the motion did.¹⁶³ Larger gestures gaining popularity in Quintilian's day included striking one's sides with one's hands, swinging one's arm over one's left shoulder repeatedly, setting the right foot on tiptoe or lifting it off the ground, flapping the elbows against the sides, and rubbing one's nose.¹⁶⁴ While Quintilian includes these to show the eccentricities that were arising in the courts and indicate his disapproval, these examples impress upon us how physical some of the gestures were. Indeed, Quintilian indicates that as the speech advanced, gestures were to become bigger and more dynamic.¹⁶⁵

Aldrete intimates that the level of detail and the apparent specificity of gestures indicate that one purpose of making gestures was to supplement the advocate's spoken word as sign language for those out of earshot.¹⁶⁶ Corbeill has rightly expressed unease over this interpretation.¹⁶⁷ There was indeed an unusual concentration of detail in the gestures. However, Quintilian treats gesture as an important means of *intensifying* the spoken words, to raise the emotions of those in the courtroom. This amplification was achieved by visually displaying the sentiments expressed by the advocate.

Habet autem res ipsa miram quondam in orationibus vim ac potestatem; neque enim tam refert, qualia sint, quae intra nosmet ipsos composuimus, quam quo modo effferantur; nam ita quisque, ut audit, movetur ... omnes languescant necesse est, nisi voce, vultu, totius prope habitu corporis inardescunt.

However, [delivery] itself has a certain amazingly powerful strength in oratory; nor truly does it matter as much what sort of things they are which we have composed within our own minds, as how they are expressed; for how the matter is presented will determine the impression each hearer forms ... It is inevitable that all [appeals] will be weak, unless they are enflamed by means of voice, look, and the demeanour of the whole body.¹⁶⁸

Graf defines the use of gesture succinctly: "to underline and amplify the message of language by stressing the emotional, non-rational elements."¹⁶⁹ This accords with Quintilian, who asserts that three elements of the speech move people: the voice, the grace of the gestures, and the delivery.¹⁷⁰

Movement within the courtroom was also considered an important accompaniment to gesture. As I have established, it is certain that advocates spoke while standing in a sizeable open area that allowed for perambulation. We find a wide variety of movements. Walking to and fro during one's delivery, if done for impact rather than out of nervousness, was considered effective by Pliny. However, Quintilian says it must only be for very short distances.¹⁷¹ Disarray of the toga to the extreme of falling off completely seems to have been a normal result of the advocate's mobility.¹⁷²

Clearly the courts of Rome were, by most modern standards, far less disciplined. The advocates, in addition to using sometimes quite wild gesticulations, also had a great deal of physical interaction with the audience. We have already discussed them hiding among the audience, sitting on benches during opponents' speeches, and going around the court approaching various individuals.¹⁷³ During periods of extended applause, they talked with their friends, and when exhausted fell into the latter's arms.¹⁷⁴ Advocates are

also known to have consumed food and drink even during their pleading, although Quintilian does not approve of this practice.¹⁷⁵

The emotional nature of speaking was perhaps the most draining element of forensic oratory. According to Quintilian, it was not enough that the advocate give the appearance of a specific emotion – he had to actually feel it. Quintilian claimed that the effect was not fully convincing to the audience if the emotion was not genuine.¹⁷⁶ A speech, as we have seen, contained many different emotions, each of which had to be internalised and expressed appropriately. Convincing displays certainly improved a speech. Following his request for full payment after the completion of a case, Martial is told that he did not win, so he was going to be paid only half. Martial retorts that even so he deserves the full payment, because he managed the appropriate emotional display – he blushed.¹⁷⁷ Quintilian states that in his own cases he could bring himself almost to tears and turn pale with grief.¹⁷⁸ In his opinion, the final section of the speech, the *peroratio*, demanded the greatest emotional display.¹⁷⁹ Seneca, agreeing, suggests that an especially effective gesture here was to bow one's head and make the voice break with emotion.¹⁸⁰

In addition to the gestures and movements he used and the emotions he displayed, we have noted that the physical appearance of the advocate was acknowledged as an effective tool. The advocate's hair was to be cut, and not arranged in tiers and ringlets, something seen too often, in Quintilian's opinion.¹⁸¹ His clothing was to consist of both toga and tunic. Quintilian is very specific concerning the length of the tunic and the arrangement of the toga, though he does not insist that the latter be made of silk.¹⁸² The overall impression of the advocate's clothing was to give him a distinguished and manly appearance.¹⁸³ It would appear, however, that all did not follow Quintilian's advice. Juvenal, as we have seen, criticizes one advocate who wears a transparent chiffon garment in the courtroom. When he protests that it is July and unbearably hot, Juvenal remains as much displeased by the spectacle as Quintilian surely would have been.¹⁸⁴

Jewellery was permitted. Again, though, Quintilian calls for simplicity: rings should not cover the fingers and "*non medios articulos transeuntibus*", "not extend beyond the middle joint."¹⁸⁵ Rings do appear to have been quite common. Juvenal mentions the poor advocate who rents a sardonyx ring in order to appear more successful and attract clients. One of Restitutus' clients may have brought sardonyx rings as payment for her case.¹⁸⁶

Makeup also appears to have been used. Pliny informs us that Regulus used to paint, in a circular fashion, around one eye (which eye was determined by whether he was defending or prosecuting). This is our only evidence of such use of makeup, but as Pliny does not draw particularly sharp attention to it, the practice may not have been exceptional.¹⁸⁷

Pliny also reports that Regulus wore a patch over one of his eyes, following the same principle as the makeup. It appears that the patch was placed above the eye, not covering it. We have two other references to eye patches in general,

both of which appear in Martial's epigrams.¹⁸⁸ However, the patch appears to serve a different function in each passage. We cannot say what function the patch served in the courtroom. Possibly it fulfilled a superstitious purpose, since we know that Regulus also consulted astrologers about his cases.¹⁸⁹

An advocate's overall appearance thus provided an impression of his status and served additionally to affect the audience's emotions.¹⁹⁰ Quintilian suggests that over the length of a speech it was most becoming if the toga became dislodged and unkempt; this lent an air of combat, vigour and energy, calculated to serve the advocate's ends.¹⁹¹ By the same token it was appropriate in the normal course of a case for one advocate to attack the appearance of opposing counsel.¹⁹²

The impact of the court on an advocate's speech

While the advocate attempted to integrate all these elements of his tone, glance, emotions, and diverse gestures and movements to best fit with the content of his speech, two additional factors affected his choices: the court hearing the case, and the seriousness of the case. An advocate greatly altered his style if he was arguing a public case that could result in the exile of his client, rather than a dispute over inheritance, for example.¹⁹³ Private cases on the whole required a more restrained delivery.¹⁹⁴ In all types of cases the advocate attempted to adjust his gestures, voice, and gait to best suit the rank of the judge(s) and the audience. Movements that were appropriate before a magistrate might not be appropriate in the court of the emperor.¹⁹⁵ Quintilian warns that the advocate must even be alert to the specific character of the judge, if arguing a case before a single judge. If the judge has a weighty or frivolous character, or is particularly learned, or very rustic, the advocate must adapt the various aspects of his delivery to suit. The extent of the advocate's emotional display must also be shaped to the importance of the case itself. When pleading an important public case, the advocate is allowed to use every device "*ad amplificandam orationem*", "for the amplification of [one's] eloquence". However, such emotion would be truly out of place in a case involving negligible penalties.¹⁹⁶ In addition, the emotions of the audience had to be appealed to in different ways, depending on whether the advocate was counsel for the defence or the prosecution.¹⁹⁷

The advocate also had to consider the examining court when choosing his specific arguments. Different lines of reasoning had to be used in the centumviral court versus before a *unus iudex*.¹⁹⁸ Pleas for mercy were most useful in the emperor's court and in other courts where the judge was not bound to the prescription of the law; in such circumstances, the outcome of the case rested more on the feelings of the judge, and thus emotional appeals could prove more rewarding.¹⁹⁹

An advocate's movements also were affected by which court was hearing the case. As discussed in Chapter Two, it appears that if the case was of very minor

importance the advocates argued seated rather than standing, and so a much more restrained style was appropriate.²⁰⁰ If the court was such that the judge sat on a platform, the advocate had to adjust the angle of his face and make higher gestures to compensate.²⁰¹ Finally, if the advocate was arguing a public case before a large number of judges, it was permissible for him to walk while speaking in order to make individual contact with the entire panel.²⁰²

Aids for the advocate in the courtroom

Advocates supplemented their own assets with various props within the courtroom, the most common in a public case being the family of the defendant. Closely connected to those on trial, they excited the greatest pity, lamenting that they would suffer severely if the defendant were found guilty. It was especially effective to have family members present during the *peroratio*, when the advocate's emotional pleas reached their climax.²⁰³ Quintilian states that occasionally he had seen advocates display a picture of the crime painted on wood or canvas.²⁰⁴ What specifically was depicted we do not know – the moment the crime was committed or the scene following the crime? We know of one instance when a canvas-cloth painting consisting of several separate scenes was introduced by the prosecution.²⁰⁵ In all the scenes the defendant was depicted as either naked and imprisoned, or being released after his friends paid his gambling debts. How the prosecution made use of this artistic display is not stated. The advocate may have specifically referred to it throughout his speech, describing each scene and utilizing it as a sort of prompter for his individual points, or it may have functioned as a backdrop merely to set the tone of his position.

Portraits of individuals were also utilised. On one occasion, an advocate had arranged for a wax portrait of the deceased husband of the accused to be displayed at the appropriate moment of the *peroratio*. Unfortunately, those entrusted with the task did not know what a *peroratio* was, and so whenever the advocate looked at them they displayed the portrait, thus destroying any potential effect.²⁰⁶

The impact of the case on the advocate

The goal of an advocate's use of all these tools was to improve the efficacy of his speech – to move those who were judging the case to accept his arguments.²⁰⁷ The advocate considered not only the content of his speech, but also practically every twitch of each body part, the sound of his voice, the length of his breaths, and the arrangement of his clothes. To this list may be added variations required by the type of case and the court. No wonder that when he fell silent at the end of a particularly important speech, he was drenched in sweat, utterly exhausted emotionally, mentally, and physically, with his toga in complete disarray.²⁰⁸

It is no surprise then to discover that anxiety plagued many advocates. Pliny draws a particularly vivid picture of Regulus' unease. He would appear pale in the courtroom and, in addition to painting or patching his eye, was so worried over the end result that he would consult soothsayers in an attempt to foresee a case's outcome.²⁰⁹ We see the role of superstition again in Suetonius' efforts to obtain a postponement of a case he was to argue, after a dream suggested the ruling would go against him. Clearly, he felt apprehensive enough to heed such a warning.²¹⁰

At the same time, in Quintilian's opinion nerves could be utilized. If the judge had not yet given the advocate his attention or was being distracted by some other means, the advocate could fill the time by confessing to his nervousness with a large sigh.²¹¹ Quintilian suggests that an advocate should not try to hide this feeling unduly, although he does not explain why. However, we can conclude from his general approach in the *Institutio Oratoria* that he thought nervousness would have a favorable effect on the judge(s) by suggesting the sincerity of the advocate and giving complimentary acknowledgment of the importance of the judge(s). The advocate, moreover, was not the only one who felt anxious when he rose to speak. Parents, too, could feel the weight of what was at stake. In a letter to Gavius Squilla Gallicanus, Fronto envies Gavius for being present when his son argued his first case, saying that at least his nerves were relieved as the speech progressed and met with approval; Fronto, by contrast, had to wait at home to hear the outcome.²¹²

This anxiety was not motivated solely by uneasiness over personal ability or the outcome of the case. The advocate had far more to win or lose than the case itself. As already noted, an important component of the Roman social hierarchy was the significance it attached to visibility – which not only advertised an existing reputation but also could augment or diminish it. The courtroom, with its very public nature, was another arena in which individuals could increase their esteem and influence or lose what reputation they already had.

Through extended study of the sources, one gains a better sense of how success in court was closely linked to an advocate's influence, fame, and reputation beyond the courts. Indeed, a Roman male's public status tied into the formation of his entire personal identity. Above we discussed how aspiring politicians used the courts as a springboard to a public career. However, for the most part we viewed this in terms of exposure; an advocate could become known and hence enlarge his circle. Yet this is not the complete picture, for in fact, the courtroom was an arena in which the advocate built his public identity and then, through the cases that made up his career, reinforced, improved, or destroyed that identity and career. Aper asserts that no profession could do as much as advocacy to enhance reputation and bring public renown.²¹³

The degree to which the events of the courtroom reached beyond its boundaries is clear in the sources. Seneca the Elder describes how an epigram used by an advocate in court became a common joke around town for some time.²¹⁴ We have already noted visitors who came from outside Rome and

immediately wanted to see the advocates they had heard of back home.²¹⁵ Pliny's purpose for writing many letters was to keep out-of-town friends informed with news of the latest cases taking place in the city.²¹⁶

However, the degree of this celebrity status was not based solely on winning or losing a case; the audience was drawn because they saw how much risk the advocate was taking. Quintilian says an audience is moved not only by the issue of the case, but also by what the advocate has at stake, for which he uses the word "*periculum*" (danger).²¹⁷ In another passage he uses this same word to explain the origin of the advocate's nervousness.²¹⁸ The peril was not just the possibility of losing the case. In the *Dialogus*, Maternus acknowledges that the quest for fame in the courts entailed the possibility that the outcome could damage the advocate's status and reputation: "[*nec*] ... *famamque pallentem trepidus experiar*", "may I not, fearful, have to test pale fame."²¹⁹ The degree of risk that an advocate took was naturally tied to the position and skill of the opposing litigant and counsel. We have discussed how giving offence might be a concern when facing powerful adversaries. But success against such opponents meant the attainment of greater influence and weight for the victor.

An additional element that enhanced the risk was the possibility of being charged with *calumnia* – wrongful prosecution. If condemned on such a charge, the punishments varied but could include infamy, inability to prosecute in criminal cases, exclusion from running for office, and other restrictions. Such a charge could ruin one's public career in both political and legal spheres. Seneca the Elder recounts an advocate who was in danger of being indicted for *calumnia*. Seeing the risk, a friend aided him by appealing to the judges, and the charge was avoided. Afterwards, when questioned as to why he helped, the friend said that he feared the advent of another rhetorician.²²⁰ The professions of rhetoric and advocacy had enough in common for a degraded advocate to take such a position.

A strong link between success in court and an advocate's reputation and influence stemmed, in part, from the Roman equation between an advocate's ability to plead and his personal character. It was not simply a matter of a man being helpful to his friends, as we have seen described in Horace, but reached far deeper.²²¹ Quintilian states that the advocate should be "*vir bonus*", "good man".²²² He takes this one step further when he says that the manner of an advocate's pleading will in fact *indicate* whether he is a good or bad man. A statement by Aper is an excellent example of how an advocate's ability to plead was considered inseparable from the person himself:

*Quid enim dulcius libero et ingenuo animo et ad voluptates
bonestas nato quam videre plenam semper et frequentem
domum suam concursu splendidissimorum hominum, idque
scire non pecuniae, non orbitati, non officii alicuius
administrationi sed sibi ipsi dari?*

What can be more pleasing to a free and honorable mind, born to respectable pleasures, than to see his house always full with a coming together of the most distinguished men, and to know that this is not because of his wealth, or childlessness, or his administration of some office, but because of *him*?²²³

Speaking of the rewards of eloquence, Aper contrasts what draws people to attend upon other individuals: offices they hold, their childlessness, or their wealth. However, instead of saying that the advocate draws people because of his rhetorical skill, Aper declares that they are drawn to him because of "*sibi*" (himself). He does not see an advocate's skill as a trade to be practised, but rather as a part of the advocate's self, his identity. This fusion was so strong that when an advocate's speaking ability did not match his character, bafflement resulted. In his description of Cassius Severus, Seneca the Elder states that the most remarkable feature about Cassius was that the "*gravitas, quae deerat vitae, actioni supererat*", "the dignity that was lacking in his life was abundant in his speech".²²⁴ To the Romans, lifestyle and speaking ability were inseparable.²²⁵

Fame and reputation were clearly attached to the activities of the courts of Rome. At the beginning of the previous chapter the validity of the so-called "decline" of eloquence was considered, and it was argued that, while there was no decline *per se*, oratory did undergo various transformations during the early imperial period. In addition, it also appears that, as the motives of those arguing cases before the court evolved and diversified, the presentation of a speech within a courtroom also was affected by various stylistic changes. In light of the apparent social evolution within Roman oratory, we can forge links between these changes and the formation of fame, influence, and character. For the most part, the new developments are branded by the ancient authors as undignified, base, and disastrous for oratory.

The development that garners the most attention among the ancient authors is the changing style of public speaking. It had become, they tell us, more flowery, effeminate, voluptuous, and corrupt.²²⁶ Delivery was in a chanting, singsong fashion, with many modulations of the voice that Quintilian could not decide whether to call useless or repugnant.²²⁷ Furthermore, advocates were not hiding their skill in an effort to make the speech seem spontaneous, as Quintilian advised.²²⁸ Instead, they were flaunting their talents and being ostentatious to the point of sacrificing cases so as to showcase their skills.²²⁹ The sole purpose of this display was to obtain the applause of the audience – which wanted only to be charmed.²³⁰ Quintilian calls these advocates the slaves of applause.²³¹

The reasons given to account for these various changes deserve consideration. It is possible that there was a general shift towards decadence in Roman oratory. The style of schoolroom declamation was increasingly infiltrating the courts and, by its nature, declamation focused more on the artistic function of oratory than on the practical.²³² The growth of the empire may also have had

some small effect. As mentioned, more cases meant that the courts did not always have adequate time to deal with each one; in consequence, intricate time-consuming arguments might have had to yield to practicality on occasion.²³³ Finally, statements suggesting that the practices of the past were better than the present situation warrant caution, since it is a timeless human characteristic to denigrate the present in favor of former times.

These arguments perhaps can explain some of the changes. However, two shifts cannot thus be accounted for: 1) the increasing focus of advocates on gaining the approval of the audience which, taken to extremes, damaged the case, and 2) comments about the education of both the audiences and the advocates. To explain these phenomena we must acknowledge both the new social reality found in the Roman courtroom and the impact of the changing political climate in the early imperial period.

Why were advocates undermining themselves and their case for the applause of the audience? One factor surely must be the influx of new advocates of provincial or humble origin. What were their motives for taking up advocacy? Above I argued that the profession enabled them to make money and improve their social status. At the same time, however, the great majority of these men likely were not intent upon gaining the level of influence and power that a political career required. Not attempting to impress the politically powerful individuals of Roman society, these men were perhaps satisfied with dazzling those who judged the cases and creating enough reputation and celebrity to make a name and a stable career. These advocates did not have to adhere diligently to the traditional style and work to win over members of the ruling class who had been trained in such skills. The audience was their focus, and they therefore adapted their styles to appeal to it alone.

On the opposite side, the changing political nature of oratory may have affected aristocratic advocates as well. It is held by some that, with the coming of the Principate, the opportunities for public oratory (in the political and legal arenas) began to dwindle, as more decisions were made by the emperor apart from the established system.²³⁴ Other scholars, however, suggest that Romans did not withdraw from the courts but rather, in fact, turned to the courts all the more (as the other arenas were closed off) to facilitate the formation of their public reputation.²³⁵ The rigid requirements of traditional rhetorical practices were perhaps slowly relaxed since the role of the courts as a political nursery was diminished when political power was determined more by proximity to the emperor than proven oratorical abilities.

Stepping back, are we perhaps overestimating the ability of the courts to make a man's reputation? In the late republican or early imperial period, how extensive is the evidence that a person of no wealth or connections could become a political powerhouse through the courts? Certainly we can say that the courts were a way to maintain, increase, and decrease reputation. However, they perhaps could not *create* it from scratch. In the republican period, did an advocate *first* make his name through court cases

or was his *auctoritas*, to a certain degree, already made outside the court, with the court serving to publicise that *auctoritas* and augment it?

Or should we be seeing this function of the courts as a development of the imperial period? Is it possible that this arena began to be considered a place where a reputation could be made from scratch only in this period? If an advocate came to the courts already possessing a certain amount of *auctoritas*, he did not have to focus on the audience from whom he had to gain his reputation, but could focus on presenting a tightly argued case (which would be of more interest to politicians looking for new magistrates and allies). Fronto describes the son of Squilla Gallicanus who went to speak in the courts: “*nam in forum descendit natalibus nobilis, de foro rediit eloquentia quam genere nobilior*”, “for he went down to the forum noble *by birth*, he returned from the forum more noble by eloquence than by lineage.”²³⁶ Even Pliny, who must have had some connections through his uncle (an advocate for many years) was hardly *starting* his pursuit of *auctoritas* in the courts. However, we can assume that those of more humble origins entering the courts over the course of the first century were beginning with little or no *auctoritas*, and thus had to appeal to the audience to gain that approval. Courts were becoming the cradle, rather than the showcase, of *auctoritas*. Such a shift clearly resulted in far greater importance being given to the audience's approbation; their approval was no longer seen as a means by which an advocate could swing the opinion of those whose opinions really mattered. Now their approval was the goal itself.

The tie between personal identity and oratory can perhaps also be seen as a result of this social transformation in the courts. Would Cicero have equated his personal identity so closely with his oratorical abilities? If Quintilian is reacting to those trying to *create* a reputation in the courts, a most effective way of excluding them from the contest would be to say that only *good* men could be effective advocates. No doubt uneducated humble speakers would not meet his criteria for being “good”. By imposing such a definition, Quintilian can then explain successful advocates of humble origin as good speakers but bad men.²³⁷ By this method Quintilian attempts to remove the audience's power to grant any status to an advocate, by arguing that status is set and determined before entry to the court – a “*vir bonus*” is made before he goes before an audience.

Since the audience now played a pivotal role in the creation of reputation, an additional method of thwarting such advocates' hopes involved criticizing these spectators. In the sources we find a number of disparaging statements concerning the audience.²³⁸ Claims that humbler advocates were working solely to win the approval of an uneducated, ignorant audience would explain these advocates' success, without requiring established advocates to acknowledge them as equals.

CONCLUSIONS

The Roman courtroom was an arena where parties entered into combat. In nature it was far different from the amphitheater, yet it nonetheless hosted struggles, and ones that could have dire results for many. Sometimes Justice was served: sometimes she was frustrated or disappointed. This study has attempted to bring to life the environment of the courts of early imperial Rome, in all their variety, both by reconstructing the physical features of the courts as far as the evidence allows, and by breathing life into the personal dimensions of those participating within.

The daily lives of Rome's inhabitants were impacted by legal activities to an extent not found in modern western society. Located in so many of Rome's public spaces, which served multiple other functions as well, legal hearings could not be avoided by anyone attempting to traverse Rome's central locales. The dispensation of justice by the magistrates, the emperor, his delegates, the *quaestiones perpetuae*, the *centumviri*, as well as those in the position of *unus iudex* was visible to all in the *fora* of the city and other locations. Each of these public spaces, by means of its historical significance and decoration, was politicized and we should not underestimate the messages consciously conveyed by holding specific courts within particular spaces. Yet the non-intrusive nature of so many courtrooms (employing temporary platforms and benches), their ability to function within these environments without affecting the physical structure of the space, makes it all the more difficult for us to appreciate how much the courts must have dominated the visual landscape. A citizen attempting to complete some business in the middle of the day could happen upon a panel of judges in the Forum of Augustus preparing to deliver their ruling in a murder case, the emperor examining witnesses in an adultery case in the *Forum Romanum*, or an upper-class citizen rising to present his own case before a single judge for a debt owed to him by his brother-in-law. The same citizen might have found a similar hearing taking place within the house of one of his wealthier, connected friends. If he did not have to rush to his next business engagement, he might even have stopped at the adultery hearing in the emperor's court and found a seat among the benches to await both advocates' closing speeches. If rushed, he may only have had time to stand among the

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other passers-by at the back, to hear a witness claiming to have seen with his own eyes the adulterous pair in *flagrante delicto*. In such arenas as these, as Juvenal says, a citizen could learn a great deal about the morals of the day.¹

This transparency of Rome's legal activities served many purposes. At their most superficial they entertained in a way that required slightly more intellectual fortitude on the part of the audience than was required of those in the amphitheater, while, at the same time, the courtroom always contained at least the possibility of some unforeseen, unpredictable excitement that would not be found in a recitation hall. For the city magistrates and, still more importantly, the emperor, court publicity showed them hard at work, fulfilling their duties, advertising not only their abilities but also the appropriateness of their functions. As members of the ruling elite (or as emperor), they were supposed to be resolving disputes and imparting justice on behalf of the state. In this environment non-conformists were punished, conflicts between individuals were resolved in peace, and examples were made of all.

The publicity of courtroom activity served various ends for all the other participants we find within the courts. For the equestrian judges who came from distant lands to serve on the panels, this public role had the potential to advertise the success of a career nearly completed or to mark his elevation to a new playing stratum in which he hoped to make great gains. For single judges chosen by their feuding friends to hear disputes, sitting in judgment in the Forum or their own home induced public acknowledgment of their fairness. Litigants of course had a great deal to gain and to lose from the publicity of their disputes. In some cases the public impact of a case on his opponent was the sole reason a person brought a dispute before the courts. For other prospective litigants the fear of having their own private lives dragged before the public, and the possible resultant embarrassment, was great enough to convince them that settling the matter out of court was advisable at virtually any cost.

While the advocate was not engaged with a case to the extent of his client, in that he neither suffered penalty from defeat nor directly gained if his client won, he did triumph or lose in his own way. For those advocates of modest means, cases were employment and a source of income. If at all ambitious, these individuals hoped their success in the courtroom would bring other prospective litigants to their doors. For those advocates of the upper classes, the courtroom's publicity made it a perfect vehicle for political advancement. Important cases, whether civil or criminal, attracted large audiences, and such news traveled even beyond the city to the extent that visitors to the city regarded popular advocates in a similar light as our society regards celebrities. Advocates who could harness that popularity stood to achieve much: equally, failure could mean collapse of a man's reputation.

The courts could also serve as instruments to create or strengthen other relationships, such as that between patron and client. Litigants and advocates alike expected, and perhaps demanded, that those tied to them through

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patronage appear and show support for their patrons as members of the audience. For a litigant these clients could strengthen the weight of his case by either shoring up a weak case or adding still more strength to his onslaught.

In such an environment, the concrete theatrical elements of the courtroom cannot be overlooked and so this study has included an examination of the physical settings found inside some of Rome's courtrooms. Through careful consideration of the scattered references made to the courtroom space itself or to the movements within, I have reconstructed in some detail the settings for public cases. This reconstruction, with its inclusion of a panel of judges, can also be confidently applied to the internal arrangement of the centumviral court's individual tribunals. For the courts of the emperor and other magistrates who heard cases following the *cognitio* procedure, this reconstruction requires merely a reduction in the number of judges' benches and the substitution of assessors for judges.

It is within this environment that the actors of the courtroom undertook their respective roles. While Quintilian and others are quick to stress the differences between the advocate and the actor – and no doubt the title of this book would make Quintilian tear out his hair in despair – the advocate was expected to use every weapon in his arsenal to win his client's argument. While in relatively minor cases this called for a sedate, measured presentation, in significant or critical cases the advocate calculated how every movement, from the rise and fall of an eyebrow to each turn of his foot, would benefit his cause. He adjusted his tone and vocabulary. He arranged for the display of murder weapons, busts, and artistic representations. He called for the family members of his client to cry and moan if appropriate, and for the litigant to be actively engaged through appropriate clothing, gestures, and expressions. There could also be much physical movement within the courtroom: children of the litigant rushing to his side; litigants falling before the feet of a judge; advocates feigning exhaustion and collapsing into the arms of their friends, or hiding amongst the audience in a pretense of terror. While the advocate's ultimate goal was to convince the judge(s) of his case's validity, he was certainly aware of how he could also utilize the audience to this end. An audience moved to laughter or tears, whether as a spontaneous result of the advocate's efforts or by collusion with the advocate or litigant, would no doubt have prompted even the most stubborn judge to consider being swayed.

Such talk of the theatrical, entertaining aspects of the courtroom must not, however, detract from the fact that pressures and anxieties were felt by many within the courtroom. The litigant, of course, was most impacted by the case. In a criminal matter, a conviction potentially had very dire consequences. For those involved in civil cases, great or small, money could be lost and the litigant might suffer some loss of status. In the surviving sources, we hear even more of the anxiety and pressures felt by advocates, which likely were surpassed in degree only by those felt by litigants. To a certain degree, knowing that a client had entrusted his future wellbeing to his advocate's

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efforts must have made the advocate all the more nervous. In addition, he was then supposed to remember what to say and how to say it, and to deal with all things unforeseen. It is little wonder that some advocates had nightmares of failure and attempted to discover the case's outcome through soothsayers. The stakes could be high; indeed, victory in an important, well-publicized case had the potential to ignite an advocate's political career. His success could guarantee that his name became known in far-flung corners of Italy, his speeches studied by generations of aspiring youths. For those advocates with less lofty goals success would mean a continuous flow of new clients and a stable source of income. With so much possibly riding on the outcome of a case, those close to the advocate shared his anxiety. Indeed, we hear of wives attending their husbands' speeches, fathers worrying over their sons' orations.

Nor were the judges immune to anxiety. To judge a legal hearing with no training, even when specialized knowledge was not expected, could have left a conscientious man feeling a bit out of his depth. The outcome was of importance to both litigants, and single judges in particular surely felt a responsibility to make the best decision; for a judge who heard a case as a member of a panel, perhaps the pressure was alleviated by sharing the task. However, while the data is slight, evidently some judges became victims of intimidation; worse (and on which we are slightly better informed), some judges apparently had little problem setting their ethical responsibilities to the side and accepting bribes for a favorable verdict. Based on the evidence, however, such circumstances do seem to be exceptional rather than routine.

* * *

The two greatest challenges to this study have been the unevenness of the evidence for the various types of courts found in Rome and the degree to which social status affected each category of participant. With the available materials, inevitably discussion tends to focus more on the courts that dealt with public cases, or important private cases, and the courts connected with important individuals such as the emperor and the *praefectus urbi*. Whenever possible, every effort has been made to include examination of the remaining courts, which likely heard the majority of cases, particularly the court of the *unus iudex*. There seems to have been significant similarity in courts of every kind; however, where differences are apparent, this study has attempted to consider them. Overall, it appears that the court of the *unus iudex* consisted of "smaller" versions of elements from the large public courtroom: a smaller space was required; a smaller audience was present; the advocate presented his case in a "smaller" way – his gestures were more reserved, his vocabulary less grand, and he may even have been seated. Finally, for all participants the emotional expenditure would have been diminished. The matter was less critical to the litigant, it did not warrant

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the tears and wailing of his family, and success or failure was less vital to the advocate. It must be stressed that it was in this environment that the bulk of Rome's legal disputes found their resolution.

The second challenge, the impact of status on the examination of those involved in the courts, has engaged many scholars over the years, and certainly is not specific to this topic alone. The upper-class flavoring of so much of the evidence hinders attempts to understand the participation of those of lesser status in the legal system. Almost every aspect of the Roman courtroom was affected to an extent by the impact of status. The more *auctoritas* and power a litigant had, the better his ability to intimidate a judge to rule in his favor. Better still, such power could keep him from being taken to court in the first place. But status could also work against a litigant. One with a reputation for underhanded dealings or for using heavy-handed tactics could frequently have been dragged to court by enemies intent on complicating his life, and could even have found himself before a judge who was already hostile before the facts of the case were presented. The status of the judges must also be of primary consideration. While single judges chosen by the disputing litigants could be of any social status, those judges included in the *album indicum* represented far fewer social groups since a minimum level of wealth was demanded. And yet, even within this group we find increasing variance during this study's time period. With the opening of the *album* to those with 200,000 sesterces, and then as well to those from the provinces who met the wealth qualifications, Quintilian and his colleagues found some judges to be lacking in many respects. And yet advocates could not cast too many stones. Quintilian and his fellow advocates surely provide an excellent portrait of the advocate from the upper echelons of Roman society. However, this study has revealed that, during the first two centuries of the imperial period, individuals with far less elevated backgrounds and far less lofty goals were also coming to advocacy and the courtrooms as a career. And these men, whether from fine old Roman families or newly arrived in the city from the hinterlands of Gaul, would have found themselves before an audience – a group among whom the widest kaleidoscope of statuses could be found. Slaves, running errands for their masters, or accompanying their young wards who were studying rhetoric with Quintilian, could be found listening to the same case as the likes of Maecenas present to provide support for his friend charged with adultery. To this amalgam must be added those clients of the litigants or the advocates who felt compelled to attend, and who could also range widely in status. And to complete the recipe, the general public must be acknowledged, some of whom attended merely because the case was entertaining, while others supplied applause of various forms in return for pay. The courts, in fact, must be acknowledged as yet another environment within Rome in which interaction between those of vastly disparate social classes was possible.

Rome's courts were, in essence, highly diverse. The courtroom itself could range in size from a space large enough to hold only the immediate participants

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and an audience of one or two, to the Basilica Iulia accommodating one case being heard by all 180 judges together with an audience of over a thousand. The participants of the courts, the litigants, judges, audience, and advocates, approached their roles with their own motives, prejudices, and aspirations. In this space that was the Roman courtroom, amidst all the limitations and imperfections arising from status, politics, and personal gain, the dramas in the theater of Justice ran their course.

NOTES

INTRODUCTION

- 1 Bergmann and Kondoleon (1999).
- 2 Other occasions included delivering a speech before the senate, giving a recitation in the less politically charged environment of a public hall, or pronouncing the *elogium* at a funeral.
- 3 Juv. 13.157–161.
- 4 Sen. *Controv.* 1.pr.1; Griffin (1972) 6–8, 11.
- 5 Sen. *Suas.* 3.1–7, 6.1–27.
- 6 Cicero: *Controv.* 1.pr.11–12. Other known advocates he quotes in the *Controversiae*: e.g. Albucius Silus (1.1.10, 1.3.4), Porcius Latro (1.1.1, 1.2.1, 1.3.1), Fabius Maximus (2.4.11).
- 7 E.g. Sen. *Controv.* 2.4.11, 2.5.13, 3.pr.5, 3.pr.14, 17, 4.pr.10, 7.pr.6–8, 9.pr.1–5, 9.5.15–16.
- 8 Bonner (1949) 84–132; Crook (1995) 163–167.
- 9 Russell (2001) 2–3.
- 10 Quint. *Inst.* 12.11.3; Tac. *Ann.* 14.19; Plin. *Ep.* 2.14.10.
- 11 Suet. *Vesp.* 18.
- 12 Quint. *Inst.* 4.pr.2; Plin. *Ep.* 2.14.9.
- 13 Mart. 2.90; Juv. 7.186–190.
- 14 Levick (1999) 194.
- 15 Quint. *Inst.* 7.2.24.
- 16 Quint. *Inst.* 9.2.73.
- 17 Quint. *Inst.* 6.1.40.
- 18 Quint. *Inst.* 6.2.36.
- 19 E.g. Quint. *Inst.* 4.1.33, 34.
- 20 A point which is argued for by Crook (1995) 167–171.
- 21 Tac. *Dial.* 2.1, 3.4, 4.2, 6.4, 13.5, 14; *Hist.* 3.9, 4.42. Mayer (2001) provides a recent commentary on this text. Pliny on Regulus: e.g. *Ep.* 1.5, 1.20.14, 2.20, 4.7, 6.2.
- 22 Tac. *Dial.* 2.1.
- 23 Plin. *Ep.* 7.20.4.
- 24 Plin. *Ep.* 2.11.
- 25 E.g. Hor. *Sat.* 1.10.25–26, 2.2.8–9; Mart. 2.13, 7.65; Juv. 3.297–300, 8.127–128, 13.1–4, 135–142.
- 26 E.g. Hor. *Sat.* 1.9.35–42; Mart. 4.8.2, 7.28.7; Juv. 6.67–68, 13.31–33.
- 27 E.g. Mart. 1.79, 3.38.1–6, 7.51.1–6, 11–12; Juv. 7.106–149.
- 28 Braund (1992) 80.
- 29 Hor. *Sat.* 1.9.35–36.

- 30 Juv. 6.67.
- 31 Hor. *Sat.* 1.4.65–66; Juv. 2.51–52.
- 32 Juv. 13.31–33.
- 33 Juv. 2.65–98.
- 34 Friedländer (1969) 63–68 thinks Juvenal used some fictional names but likely used actual names of those of humble station. Crook (1995) 126 thinks those of humble origin must be accurate. Courtney (1980) 17 does not give a general opinion on the satires as a whole but he states that a number of specific individuals, whom Courtney names, were real.
- 35 Quintilian: Mart. 2.90; Juv. 6.279; Regulus: Mart. 2.74, 6.38; Pliny: Mart. 10.20.
- 36 Mart. 6.19.
- 37 Juv. 13.157–161.
- 38 Talbert (1984) 189–195.
- 39 Mart. 10.87.
- 40 Plin. *Ep.* 3.9.16.
- 41 An additional body of helpful evidence exists for the judge, as a collection of approximately 150 inscriptions (though there are difficulties with their interpretation).
- 42 Talbert's examination of the senatorial court (1984) 460–487 has gone a long way toward setting the senatorial court within its broader context of the senate as a body. Further study would still be fruitful.
- 43 Cic. *Mur.* 27; Sen. *Ben.* 6.6.1–2, *Clem.* 2.7.3; Plin. *Ep.* 7.30.2. The *lex Irnitana*, in ch. 87, 89, 91, and 92, speaks of the “*iudex arbiterve*”, “judge or arbiter”, in several contexts. Modern scholarship: Lemosse (1944) 150–151; Brogгинi (1957) *passim*; Kelly (1976) 117–119.
- 44 Jurisdiction and procedure: e.g. Jones (1960), (1972); Kelly (1976); Peachin (1996). Transference of cases: e.g. Camodeca (1986), (1992), (1996), (1999); González (1986); Johnston (1987); Burton (1996); Metzger (1997), (1998), (1998a), (2000a). Social aspects: e.g. Kelly (1966); Garnsey (1970).
- 45 E.g. Johnson (1927); Richardson (1973); Anderson (1984); Giuliani and Verduchi (1987); David (1995); Carnabuci (1996); Packer (1997).
- 46 Aldrete (1999) focuses upon the interaction between the emperor and the crowd, Millar (1998) on speaker and assembly. On the role of gender and identity see Gleason (1995); Foxhall and Salmon (1998); Porter (1999); Gunderson (2000); Goldhill (2001).
- 47 E.g. Rutledge (2001).
- 48 Rodger (1996) 61.

1 THE LOCATION OF LEGAL ACTIVITIES IN THE CITY OF ROME

- 1 Velleius Paterculus (2.89.3) and Dio (53.32.2) do not agree on whether this was the occasion when Augustus lowered the number from that set by Caesar or the reduction had occurred earlier. See Mommsen (1887) 2.202–203; Rich (1990) 168; Brennan (2000) 390–391. All dates are AD unless otherwise stated.
- 2 Tac. *Ann.* 1.14.4; Dio 56.25.4.
- 3 Dio 58.20.5, 59.20.5, 60.10.3. We have little evidence for the number of praetors following the Flavian period, and our evidence for that period itself is disappointingly scant. See Mommsen (1887) 2.202–203.
- 4 The jurisdictions of the *praetor urbanus* and the *praetor peregrinus* are very difficult to determine. For recent thorough discussion of the republican evidence see Brennan (2000) 133–135, 461–465. There appear to be two main schools of thought: one sees the two positions separated by nature of dispute (i.e. the *praetor urbanus* was concerned with disputes between citizens, the *praetor peregrinus* with disputes involving non-citizens); the other suggests that the division of work depended on who was available. See AE 1996, 407; Watson (1974) 64–67, 72–82; Camodeca (1996) 172–173.

- 5 Treasury: Dio 53.32.2, 60.10.3; *fideicommissa*: SHA. Marc. Aure. 10.11; Gai. *Inst.* 2.278; *Dig.* 1.2.2.32; Levick (1990) 123; Disputes of private individuals with *fiscus*: *Dig.* 1.2.2.32; Plin. *Pan.* 36.4.
- 6 For an account of the development of these magistrates and courts in the Republic see Greenidge (1901) *passim*. Crook (1967) 68–97 contains a more economical account of the development during Cicero's and imperial times. Frier (1985) 42–78 offers an interesting examination of the office of the *praetor urbanus* and accessibility to legal remedies during Cicero's time.
- 7 There is uncertainty concerning when the tribunal was moved here from its original location in the *Comitium*. The debate rages around the identity of the benefactor of the *puteal Libonis* portrayed on coins minted sometime between 71 and 54 BC: e.g. rev. PUTEAL SCRIBON (Grueber [1970] 419–420). Libo Scribonius, likely a *triumvir monetalis*, minted these coins either because he commissioned the *puteal* himself or to commemorate his ancestor who did. Possible ancestral candidates go as far back as the tribune of the plebs of 149 BC. See Coarelli (1985) 166–170; David (1995) 378–379, 382; *LTUR* 3.171–173. Richardson (1973) 225 does not think the tribunal was moved from the *Comitium* until at least after the cremation of Clodius and more likely at the beginning of construction of the Curia Iulia in 44 BC. Carnabuci (1996) 19–28 provides an economical overview of the evidence and modern scholarship for placing the *praetor urbanus* within the *Forum Romanum*.
- 8 Main ancient texts: Hor. *Sat.* 2.6.35; Pseudacr. ad Hor. *Sat.* 2.6.35; Hor. *Ep.* 1.19.8; Ov. *Am.* 1.13.19–20; Porphy. ad Hor. *Ep.* 1.19.8.; Pers. *Sat.* 4.49; Schol. ad Pers. *Sat.* 4.49; Fest., p. 448L. For a more complete argument see Richardson (1973); Coarelli (1985) 166–180; David (1995) 377–382.
- 9 Fest., p. 448L.
- 10 Coarelli (1985) 180.
- 11 David (1995) 382. He assigns symbolic and political motives to this move.
- 12 Dio 51.22.
- 13 Richardson (1973) 230–231. Coarelli (1985) 180, as the *coup de grace*, suggests that the tribunal was in the east end since the benches and other furniture from the tribunal fuelled the pyre of Caesar! See also Frier (1985) 57–62.
- 14 Hor. *Sat.* 1.9.35–42, 74–78.
- 15 Salmon (1952) 184–193 offers an alternative route which Castagnoli (1952) correctly questions on several points. For further discussion of the legal aspects of this satire see Rudd (1961); Mazurek (1997); Cloud (2002) 239–244; Metzger (2005) 166–171. On the more general theme of Horace, satire, and the law see McGinn (2001).
- 16 Suet. *Aug.* 29.1. These public courts are also referred to as the *quaestiones perpetuae*. The selection of jurors was also to take place within this forum.
- 17 Dio 55.10.1a. AD 62 is the earliest dateable mention of this court's residence in the *Forum of Augustus*: *TH* 89.
- 18 See the new critical edition of the *Tabulae Sulpiciorum* by Camodeca (1999). The *Tabulae Herculanenses* have not been as fortunate. They are published in a scattered form through various volumes of *Parola del Passato* and *L'Année Epigraphique*. The earliest appeared in 1946.
- 19 *TPSulp*: 13, 14, 15, 19, 27; *TH* 6, 13, 14, 15. Currently it is debated whether *TH* 14 is an exact copy or records a separate event from *TH* 13 (Metzger [1998a] 222 n. 46). Regarding *TH* 13 and 14, it is not certain that the case actually reached Rome, though it was clearly the intended destination as the city is specifically mentioned. The inclusion of these documents here then is based on the conclusion that these documents provide evidence of the types of cases that would go to Rome, even if this case in actuality did not. For discussion see Metzger (2005) 159–161. There is a total of 20 *vadimonia* in the *TH* and the *TPSulp* archives. For a list see Metzger (2000a) 160–161. The others are all in the *TPSulp* collection and set appearances in Puteoli and Capua.

- 20 Of the other two, one is a *testatio sistendi* (a document acknowledging the failure of one of the parties to appear at the appointed date, time, and location), and the other is a *conventio finiendae controversiae* (a document announcing the cessation of the dispute) that refers to another *vadimonium* to Rome. The *testatio sistendi* (TPSulp 19): [C. La]ecan[i]o Basso [Q Terentio] cos pr k Febr [Rom]ae in foro Augusto [ante] statuam Gracci [ad colum]nam quar=[tam prox]ume gradus [hora n]ona C. The *conventio finiendae controversiae* (TPSulp 27): ... si Ti[berius] Iulius Spo[r]us [vadi]monium, quod ei cum L[ucio] Fla[en]io Thallo cognitore meo k[alendaris] Novembr[ibus] primis Romae in foro Aug[usto] ante statuam Cn[aei] Senti Saturnini [t]riumphalem hora tertia The texts of the TPSulp given here are those published in Camodeca (1999).
- 21 Rodger (1997) 161.
- 22 On the various forms of *vadimonia* see Metzger (2005) 7–17. Much work has been, and is continuing to be, done on defining the legal nature of *vadimonia*. See Crook (1978); Costabile (1987); Burton (1996); Rodger (1997); Metzger (2000), (2000a); Johnston (2001); Cloud (2002), (2002a); Metzger (2005).
- 23 See *Lex Irni.*, ch. 84; *Lex Rubr. Gall.*, ch. 21; Rodger (1990, 1996, 1997).
- 24 *Lex Irni.*, ch. 84; Burton (1996) 219; Rodger (1997) 161.
- 25 TH 14. It has commonly been assumed that TH 14 is a copy of TH 13. Metzger (2000) 164–165 calls this conclusion into question. One obstacle Metzger raises is that December 3 was *nefas*, meaning that the *praetor urbanus* could not hold court that day. For brief discussion of the monetary sums involved see Crook (1978) 230. I thank Dr. Metzger for his help with the translation, through private correspondence.
- 26 For discussion of the documents tied to Petronia Iusta's case see most recently Metzger (2005) 155–163.
- 27 See Carnabuci (1996) 29–76 for discussion and additional bibliography.
- 28 Castagnoli (1950) 75–77 was the first to suggest this location.
- 29 Vit. *De Arch.* 5.11.2.
- 30 Vit. *De Arch.* 5.11.1.
- 31 Castagnoli (1980) 91; David (1995) 383. The issue of courts being held under the open sky has been brought into the debate over whether the *exedrae* were roofed or not: Ricci (excavator) and Gismondi (his architect) assumed they were roofed (see Zanker [1972] figs. 4, 5). Anderson (1984) 76 believes that, had they been covered, the lighting would have been inadequate to read the inscriptions that accompanied each statue. He uses Ovid's description of Mars Ultor looking down into the *exedrae* from the pediment (*Fast.* 5.551–568) as proof. Bauer (1987) 766–767 believes they were covered, though he suggests that where the portico met the *exedra* there may have been windows that rose above the exterior roof of the portico; these would have supplied light for the *exedra*.
- 32 TH 89; AE 1996, 407; Camodeca (1996) 171–172.
- 33 Ov. *Fast.* 5.551–568.; Zanker (1988) 194–195.
- 34 David (1995) 384 also supports this location as it would maintain the same physical relationship and symbolic link between the court and a temple as the court previously had in the *Forum Romanum*. There, in David's opinion, the urban praetor's tribunal was located to the right of the Temple of Divus Iulius. In the Forum of Augustus the tribunal would be to the right of the Temple of Mars Ultor – the symbolically favorable position.
- 35 Augustus identified as *summi viri* those men “who had raised the dominion of the Roman people from humble origins to greatness” (Suet. *Aug.* 31.5). For brief discussion of these statues and the surviving fragments of the inscriptions see Zanker (1972) 15–16; Sage (1979); Anderson, J. (1984) 80–87.
- 36 TPSulp 27.
- 37 TH 6.
- 38 TPSulp 15. Most likely this phrase refers to the altar that is built into the stairs of the temple itself (LTUR 2.291). The *proxume gradus*, therefore, suggests that the two parties meet not on the stairs themselves but before the stairs on which the altar is located.

- 39 TH 15. For overview discussion of the Forum see *LTUR* 2.289–295.
- 40 For further discussion of the interesting chronological issues raised in this document see Camodeca (1999) 91–92.
- 41 Pugliese-Carratelli (1948) 171; Metzger (2000a) 160, (2005) 158. Anderson (1984) 92 appears to have misread the date given by Carratelli.
- 42 Metzger (2000a) 160. The *Tabulae Sulpiciorum* collection ranges, in its entirety, from 26/29 to 61 (Camodeca [1986] 505).
- 43 TH 15; *TPSulp* 13.
- 44 *TPSulp* 14.
- 45 *TPSulp* 15 and 27.
- 46 TH 13.
- 47 Suet. *Aug.* 29.1.
- 48 Tac. *Dial.* 39.4.
- 49 Suet. *Aug.* 29.1.
- 50 I am not convinced. If the overcrowding had been a problem, what difference would a couple of months make? Yet we do see partially completed structures opened to the public all the time in modern times. Anderson (1984) 94 suggests the consecration was rushed so that Lucius' adoption of the *toga virilis* could be held here in 2 BC. That date is not specifically supported. However, Augustus' assumption of the consulship of that year is explained by the fact that he wanted to introduce Lucius as consul. See also Vell. Pat. 2.99–100.2; Dio 55.10.2.
- 51 Varro 12.3; Livy 27.50.9; Plin. *NH.* 10.20; Plut. *Caes.* 52; Ascon. *Milo* 34.
- 52 Cic. *QFr.* 2.3.6; Livy 26.27. Welin (1953) advises caution in attaching a physical location to such a phrase. Plautus (*Cur.* 476) places the *Cloaca Maxima*, which is very much towards the eastern end of the forum, *in foro medio*. Likewise Cicero (*Att.* 4.17.8) places the Basilica Aemilia *in foro medio*.
- 53 Giuliani and Verduchi (1987) 93. See Giuliani and Verduchi (1987) 183 for drawings of the evolution of the Forum from the Augustan to Severan ages.
- 54 CIL 6.1468=31662, 37068. On the other side of this slab is the relief of the *Lacus Curtius*.
- 55 *PIR*² N 16; Giuliani and Verduchi (1987) 94. Coarelli (1985) 226–227 suggests he was *triumvir monetalis* in 19 BC and praetor a bit before 7 BC.
- 56 Giuliani and Verduchi (1987) 94. Some scholars (e.g. Platner and Ashby, Romanelli, Coarelli) believe that the inscription proves that the entire pavement visible today dates to his repaving. Giuliani and Verduchi (1980 and 1987) and Giuliani (1995), however, convincingly show that in fact the Augustan level of the inscription and the area immediately around it was preserved and incorporated into the Severan period pavement that is the present pavement for most of the Forum. At points such as those near the *rostra Vandalica*, the Arch of Septimius Severus, and the *Lacus Curtius*, the Augustan pavement actually is preserved on a level immediately lower than the Severan pavement. The Severan pavement is distinguishable with its irregular shapes of travertine and use of iron clamps to secure the paving stones. In some way the Severan pavement was slanted down to the Augustan level around that particular area. What motivated this preservation deserves study.
- 57 Welin (1953) 75–97; Richardson (1973) 219; David (1995) 376–377.
- 58 Richardson (1973) 222. David (1995) 377 does not discuss the issue.
- 59 Hülsen (1910) 21. Hülsen based his attribution on the facts that no pavement existed within this 8.9 × 7.9 m² area, and the *Anaglyphs Traiani* were discovered nearby which included a representation of a statue of Marsyas and a fig tree. For a detailed drawing of this area see Giuliani and Verduchi (1987) 95.
- 60 For a summary see Verduchi's entry in *LTUR* 5.88–89.
- 61 Giuliani and Verduchi (1987) 95–102. The points of their argument: 1) that the foundation was not directly tied to the concrete suggests there was little fear of damage from shifting or tipping; 2) the use of a slim mortar and the placement of the structure partially

- on top of a manhole cover for the republican subterranean tunnel system, which was not reinforced as it was in the case of other forum structures, indicates that the structure could not be very heavy.
- 62 Giuliani and Verduchi (1987) 100–102.
- 63 The most recent extended discussion of the *Anaglypha Traiani* appears to be Torelli (1982). For previous bibliography see Koeppl, ANRW 2.12.1, 495–496. Coarelli (1985) 314–324 also briefly considers the reliefs. For more recent discussion see Boatwright (1987) 182–190.
- 64 For pictures of the *Anaglypha Traiani* see Torelli (1982) Plates IV.1 and IV.2.
- 65 From left to right: a slightly oblique representation of the Arch of Augustus, the Temple of Castor, the space of the *Vicus Tuscus*, and the Basilica Iulia. In the foreground on the left side of the relief is the *rostra ad aedem divi Iulii* from which a figure, likely the emperor, addresses an audience standing before the *rostra*.
- 66 Giuliani and Verduchi (1987) 101–102 (drawing on p. 103) suggest a new placement of the statue of Marsyas and the sacred trees in a rectangular area, 3.7×3.4 m, repaved with travertine, immediately to the west of the tribunal and approximately 18 m from the Rostra of Augustus. Under the travertine was found a structure of concrete that suggests the base of a removed monument. The monument, which is aligned with Augustus' rostra and both the inscription of Naevius Surdinus and the tribunal, likely predates the Augustan period. The *Anaglypha Traiani* support this interpretation. On the relief, the respective sizes of the tribunal and the statue correspond to the archaeological remains. The distance between the two structures also is portrayed accurately.
- 67 Porphyry and Pseudoacr. on Hor. *Sat.* 1.6.120.
- 68 Can we go so far as to say this is a “snapshot” of the daily activities within the Forum? Perhaps not. We see a Forum full of people, the emperor addressing an audience at one end from the Julian rostra, and the *praetor peregrinus* dispensing justice from his tribunal before the Basilica Iulia in the middle of the Forum. It seems unlikely that the *praetor peregrinus* would have held court while the emperor was addressing the citizenry. Torelli (1982) 96 suggests that the raised platform and figure is an *alimenta* statuary group in which Italia is holding or presenting her children to the seated emperor, Trajan.
- 69 See Carnabuci (1996) 76–90 for an overview.
- 70 *TPSulp* 13 and 14.
- 71 Metzger (1998a) 218 n. 19. This assumes that the jurisdictions of the *praetor urbanus* and the *praetor peregrinus* were divided according to the status of the involved parties. See n. 4 above for other views.
- 72 David (1995) 384.
- 73 Zanker (1988) 203, 211.
- 74 *RG* 29.2; Dio 54.8.1–3.
- 75 Dio 60.18.3, 23.2; Eutr. 7.13.2; Camodeca (1999) 66.
- 76 Rodger (1997) 161 and 172. How was the order of cases determined? Surely, no reports were sent ahead telling the praetor what day some local court picked for him to hear a case in Rome. It seems likely that litigants were frequently hanging about for days on end, waiting for their cases to come up.
- 77 Rodger (1997) 172.
- 78 We know statues of these two men were included, from surviving fragments of the *elogia* that accompanied them: *ILS* 56, 59.
- 79 *TPSulp* 13 and 27. *TPSulp* 14 uses the same location as well. However, this *vadimonium* is between the same parties as *TPSulp* 13. A location used by both parties previously would have been a natural choice. Camodeca (1999) 67 suggests that the two *vadimonia* were executed in the same year. We can only date them to March 17 or 20 and September 30 of an unknown year.
- 80 *TPSulp* 19. Camodeca (1999) 72 identifies this Gracchus as the consul of 177 and 163 BC.

- 81 Camodeca (1999) 72 identifies the stairs as those of the Temple of Mars Ultor, based on *TPSulp* 15.
- 82 Horace (*Sat.* 1.9.35–40) wants to avoid standing around the court waiting. Cloud (2002) 242 provides a particularly good translation of lines 39–40: “Damn it, my legs aren’t up for standing around (either by the temple or in court) nor do I know any civil law.” See Metzger (2005) 167–168 as well. While the urban praetor’s court Horace was trying to avoid was, at the time, located in the eastern end of the *Forum Romanum*, it is no great leap to imagine that the press of legal business was much the same when the court was stationed in the Forum of Augustus.
- 83 Gell. *NA.* 15.5.3–4.
- 84 The further information that the praetor achieved his goal of dealing with all the scheduled business is also noteworthy.
- 85 There may also have been the opportunity in the course of the day’s session to approach the praetor with unscheduled business. The advocate in the above passage apparently made such an attempt. However, the praetor’s response could in fact be our proof that such spontaneous inquiries were not encouraged.
- 86 The surviving numbers on the Colosseum run from XXIII to LIV. See Claridge (1998) 282.
- 87 Gell. *NA.* 15.5.3.
- 88 Robinson (1995) 4; Brennan (2000) 368–369.
- 89 For discussion of the development, jurisdiction, procedure, and extinction of the *quaestiones perpetuae* see Greenidge (1901) 415–504; Gruen (1968) 258–62; Jones (1972) 48–97; Robinson (1995) 1–14; Brennan (2000) 235–238, 365–370, 416–424, 465–475. For an interesting discussion of the workload of republican praetors see Brennan (2000) 455–458.
- 90 Brennan (2000) 634.
- 91 Cic. *QFr.* 2.3.6; Johnson (1927) 48, 53; Welin (1953) 100; Alexander (1990) 130.
- 92 Cic. *de Orat.* 2.66.266; Plin. *NH.* 35.25; Quint. *Inst.* 6.3.38; *LTUR* 5.14–15; Coarelli (1985) 176–180; David (1992) 728–730.
- 93 Suet. *Aug.* 29.1.
- 94 Johnson’s 1927 work on the Roman tribunal provides an overview of this topic. Unfortunately, she often uses republican and imperial period sources without consideration of possible change over time and, on occasion, is overly confident as to what can be concluded from the available evidence.
- 95 Richardson (1973) 219. Frier (1985) 59–62 argues along similar lines for the praetor’s tribunal in the late Republic. He does not provide any evidence for his conclusions, however. We find mention of a late republican praetor moving his tribunal from one location to another for political reasons. See Caes. *BC.* 3.20.1.
- 96 For an extensive study of artistic representations of temporary platforms, including the legal tribunal, see my forthcoming study in Deroux, C. (ed.) *Studies in Latin Literature and Roman History* (2007).
- 97 For a photograph of this relief, now lost, and discussion see Gabelmann (1984) 162–163, Taf. 21.2.
- 98 Tac. *Ann.* 1.75.1.
- 99 Plin. *Ep.* 5.6.23 supports this interpretation of “*in cornu*”.
- 100 Our only republican evidence records assessors joining an urban praetor on his tribunal: Cic. *De Or.* 1.37.168. Frier (1985) 62 implies this was a common practice. This perhaps lends further support to the argument for the tribunals of the *praetor urbanus* and *praetor peregrinus* being larger. Although we have evidence of assessors in the imperial period sitting on the tribunals of others, additional factors weaken their value to this study. Piso sits on Germanicus’ tribunal in the camp (Tac. *Ann.* 2.57.4). Felix, while governor of Judaea, joined Quadratus, the governor of Syria, on his tribunal (Tac. *Ann.* 12.54.7).

- According to Josephus (*AJ* 20.129), this hearing was held in Samaria. The military and provincial locations of these tribunals make comparison to legal tribunals in Rome difficult.
- 101 Suet. *Tib.* 33; Dio 57.7.6. Dio (57.7.6) mentions how Tiberius attended the courts of other magistrates, sat on a bench opposite them, and said such things as “seemed good to him in a role as an assessor.” Two words of Dio’s passage are of particular importance: βάθρον and κατάντικον. When he speaks of a tribunal of a magistrate dispensing justice he regularly uses βῆμα (e.g. Dio 55.33.5, 57.7.2, 60.4.3, 68.10.2, 69.7.1). In this passage, however, he uses the word βάθρον, bench. In addition, he uses the preposition, κατάντικον. This word appears only one other time in his writings – when he describes a lunar eclipse and the moon moves directly opposite, κατάντικον, the sun, and the earth passes between the two masses. Dio’s use of κατάντικον in this way here strongly suggests that he visualizes Tiberius’ location to be on a bench located directly opposite the tribunal of the presiding magistrate. This provides a fuller explanation for the final line of Suetonius’ comment that Tiberius sat “*exadversum in parte primori*”, “opposite [them] at the end”. Suetonius is thus stating that Tiberius occupied one of the ends of a bench placed directly opposite the tribunal.
- 102 E.g. Mart. 11.98.18.
- 103 Mart. 11.98.14–19.
- 104 Frier (1985) 62 suggests a one metre height but he provides neither reasoning nor direct evidence for his conclusion.
- 105 Greenidge (1901) 133, 458; Johnson (1927) 27, 32; Kennedy (1972) 16.
- 106 Cic. *In Vat.* 14.34, *Sest.* 64.135.
- 107 Hoke (2000) 8.
- 108 Hoke (2000) 912 stipulates that a modern jury box should allow 0.93–1.12 m² (10–12 ft²) per juror. He then calculates that a standard 14-person jury box needs to be 5.8 to 6.4 m (19 to 21 ft) long and approximately 2.44 m (8 ft) deep. The modern jury box tends to have fixed seats for jurors with some space between each seat. If one were to transfer the jurors to benches, they could be packed far more closely together, thereby reducing the amount of space needed. Hoke (2000) 915 advises that for bleachers in a stadium 46 cm (18 in) of bleacher length should be allowed per individual. This would be quite a tight seating arrangement and one can imagine that ancient judges would not have enjoyed being this cramped for multiple hours. For this reason 0.84 m² (9 ft²) has been used for the calculations here.
- 109 Nicolet (1980) 377 suggests that due to the number and weight of so many people, perhaps the tribunal to hold a panel was lower than that used by the magistrates. He offers as evidence of this arrangement Cicero’s (*Fam.* 13.10.2) statement that M. Terentius served “*in utrisque subselliis*” – “on both benches”. Nicolet interprets this phrase as meaning the man served as both an advocate and a judge on a panel of judges. However, the phrase could also mean the man served as both prosecution and defence counsel. Raising the judges on a lower platform, as Nicolet suggests, would improve the judges’ ability to see but only slightly.
- 110 Quint. *Inst.* 11.3.134.
- 111 Quint. *Inst.* 6.1.34.
- 112 Our sources are very fragmentary; they are collected by Biondi in Riccobono (1945) 142–151. Important work was done on the laws by Girard (1913). More recently, Johnston (1987) has suggested a redefining of the laws.
- 113 This overview merely gives a sense of the procedure. Greenidge (1901) 428–504 is the classic work on the republican *quaestio* procedure. Strachan-Davidson (1912) has much to add. More recently, see Jones (1972) 63–66; Jolowicz (1972) 401–405; Robinson (1995) 1–14.
- 114 Greenidge (1901) 133; Richardson (1973) 221.

- 115 It is true that in the imperial period, the urban and peregrine praetors, like the emperor, could preside over both stages of a case during one sitting, and we can assume that in those cases the two parts of the trial would have been held in one location (Jones [1972] 97).
- 116 The estimated dimensions of the open central space of the forum (interrupted only by the *quadriga* commemorating Augustus as *pater patriae* [RG 35.1]) are approximately 50 × 70 m. Since the southernmost boundary has yet to be determined (excavators estimate a total length for the forum of 125 m) the length of the open area is tentative. See Anderson (1984) 73–74 for brief discussion and further references. I find no reference to the *quadriga* in Anderson's discussion, however. This monument would impact upon the use of the space.
- 117 Greenidge (1901) 431. Our evidence, admittedly, is entirely republican. For discussion of the sources concerning these individuals see Jones (1972) 58–59. This post was often held by ex-aediles in the year following their term of office. Examples in the epigraphical record: *ILS* 45, 47, 906, 915. The only one to which we can give an approximate date is *ILS* 47 which, interestingly, commemorates C. Octavius, the father of Augustus. There is some question concerning the plural form of the title: "*index quaestionum*". Does this mean he served in this role more than once, perhaps in more than one court?
- 118 Vitruvius. *De. Arch.* 6.5.2: "*quod in domibus eorum saepius et publica consilia et privata iudicia arbitriaque conficiuntur*", "because in their homes often both public deliberations and private trials and arbitrations are undertaken". Here was yet another way in which the Roman house accommodated both private and public activities. The Roman house and its roles have received the attention of scholars. See recently, for example, Wallace-Hadrill (1994), (1996), (1997); Zanker (1999).
- 119 It appears that the *leges Iuliae Iudiciariae* forbade the accuser and accused from entering the home of a judge, and *vice versa*, in public cases: Dio 54.18.3; *Dig.* 48.14.1.4. No mention is made of a similar restriction for those involved in private suits.
- 120 Quint. *Inst.* 11.1.47.
- 121 Quint. *Inst.* 11.3.127.
- 122 In an interesting chapter on the *unus index*, Kelly (1976) 112–133 proposes that the institution of the single judge served to provide a judicial setting for disputes which, in fact, worked to avoid a public airing of the parties' business. His evidence is republican. Crook (1995) 136 appreciates Kelly's interpretation, but rightly wonders how "private" a trial in a home would actually be, since Vitruvius stresses that the space must be large enough to accommodate more than just the parties to the dispute and the judge.
- 123 Cf. Frier (1985) 205.
- 124 Quint. *Inst.* 11.3.134.
- 125 Quint. *Inst.* 11.3.156.
- 126 Gell. *NA.* 14.2.11. Frier (1985) 205 uses this passage to support his conclusion that single judges did not use platforms.
- 127 For brief discussion see Jones (1972) 94, 113–114; Robinson (1995) 9–11.
- 128 No attempt is made to examine the nature of the disputes that came to this court. Peachin (1996) 79–88 discusses the emperor's investment of time in dealing with legal matters. Unfortunately, he does not consider the issue of the court's physical setting(s).
- 129 It is assumed that when the ancient authors use the word *forum* in this context they mean the *Forum Romanum*.
- 130 Claudius: Dio 60.4.3; Vespasian: Dio 66.10.5; Domitian: Suet. *Dom.* 8.
- 131 Dio 57.7.2.
- 132 Dio 69.7.1.
- 133 Court of Claudius in the Forum of Augustus: Suet. *Claud.* 33.1; of Trajan: Dio 68.10.2.
- 134 Suet. *Claud.* 33.1.
- 135 Ov. *Fast.* 5.551–568. This is also the *exedra* occupied by the urban praetor's court. The problem of distinguishing the nature of the disputes that came before the emperor should

- be briefly acknowledged. My interest is solely in the emperor's court as a legal tribunal. However, as Crook (1955) 33, long ago pointed out and Millar (1977) *passim*, aptly reiterated, the unique intersection of so many diverse jurisdictions within the office of emperor means that frequently it is difficult to tell if a dispute came before the emperor as a judicial hearing – either private or public – or as an administrative hearing concerning embassies from the provinces. My attempts below err on the side of caution by cutting a narrow swathe. The vocabulary particularly has been studied. For example, Dio consistently uses the verb “δικάζειν” (to judge) in the passages discussed here. I have taken this as an indication that Dio means to distinguish the emperor's court in these circumstances as a law court.
- 136 Suet. *Aug.* 33.1; Dio 55.33.5.
 137 See *LTUR* 2.46–48.
 138 Tac. *Ann.* 11.2–3.
 139 Dio 67.17.1. The *Domus Tiberiana* is also a possibility.
 140 Crook (1955) 107–108. These three rooms are located in the north-west corner of the palace with a monumental porch on the north side (Claridge [1998] 134–135). This was the most accessible and public section of the palace; as well, their location and design kept business noise isolated, and access from these spaces to the rest of the palace was easily restricted.
 141 Dio 69.7.1
 142 Dio 76.11.1.
 143 The bibliography on the imperial residences is vast and mined with complications. For an accessible overview see *Domus Tiberiana, Augustana, Transitoria, Aurea*, in *LTUR* vol. 2.
 144 *Acta Isidori*. Rec. B Col. 2.
 145 For good treatments of all of these topics, except the *Horti Agrippinae*, see *LTUR* vol. 3. For the *Horti Agrippinae* see Richardson (1992) 196. The gardens of Maecenas and Lamia served as the backdrop for what can best be described as a “walking” audience with the emperor Gaius (Philo *Leg.* 44.351). Gaius heard the argument while surveying the buildings; it is not possible to determine if this meeting was an audience with an embassy or an actual trial. For an interesting discussion of *horti* and self-representation (in which this incident involving Gaius and Philo appears) see Beard (1998).
 146 Dio 60.33.8.
 147 *Acta S. Laurentii; Acta S. Marcelli; Acta S. Crescentii; Acta S. Susannae*. See Jordan (1871) 124–125.
 148 Dio 68.10.2 (Trajan), 69.7.1 (Hadrian, who restored the Pantheon).
 149 See *LTUR* 4.54–61, 127–129.
 150 Sen. *Apoc.* 7.4.
 151 Eder (1984) suggests the Temple of Hercules Victor, which is the closest of the possible temples to the Tiber. Another possibility, not quite so close to the water's edge, is the Temple of Hercules Musarum. See *LTUR* 3.11–25.
 152 Dio 60.4.3, 68.10.2, 69.7.1.
 153 Some other possible locations will be suggested below when I discuss the unknown court locations of other magistrates.
 154 Suet. *Aug.* 33, *Claud.* 15.3, 33.1, *Dom.* 8.1; Dio 55.33.5, 57.7.2, 60.4.3, 68.10.2.
 155 Suet. *Aug.* 33.
 156 Dio 69.7.1.
 157 Suet. *Claud.* 15.3.
 158 Dio 55.7.2, 55.33.5, 57.7.2, 60.4.3, 67.17.1, 69.7.1.
 159 Jos. *BJ.* 2.37.
 160 Suet. *Aug.* 33.1.
 161 Suet. *Claud.* 15.4.
 162 Dio 55.7.2.

- 163 E.g. Jos. *AJ.* 17.230, 240, 248, *BJ.* 2.26 and 34; Tac. *Ann.* 13.52.1–3; Plin. *Ep.* 6.31.7–11; Suet. *Aug.* 51.2, *Tib.* 8.1, *Claud.* 15.2.
- 164 Suet. *Aug.* 93; Dio 55.7.2, 60.33.6.
- 165 Philostr. *VS.* 2.26.613.
- 166 Tac. *Ann.* 12.43.2.
- 167 Dio 75.15.5.
- 168 E.g. Augustus: Suet. *Aug.* 93; Dio 53.21.5, 55.33.5, 55.34.1; Tiberius: Dio 57.7.2; Claudius: Tac. *Ann.* 11.3.1; Dio 60.4.3; Hadrian: Dio 69.7.1; Septimius Severus: Dio 75.16.2, 76.17.1. The classic modern work on this topic is Crook (1955).
- 169 *P. Oxy.* 2435 = Sherk (1988) #25.
- 170 *Tabula Banasitana*, *AE* 1971, 534. ll. 41–53.
- 171 Crook (1955) 114.
- 172 Dio 60.4.3.
- 173 *Rec. B. Col. I.*
- 174 Dio 60.4.3.
- 175 Dio 55.7.2.
- 176 Tac. *Ann.* 6.10–11; Dio 52.21.2; *Dig.* 1.12.1.*pr.*4. Its original legal jurisdiction focused on petty disputes that arose in overseeing the management of the city (Jos. *AJ.* 18.169; Tac. *Ann.* 6.11). By 61 it appears this court had replaced the *quaestio* for *falsum* (Tac. *Ann.* 14.40.1–41.3). In 69 (Tac. *Hist.* 2.63), though the circumstances seem exceptional, we find Plancius Varus laying a charge, likely of treason, against Dolabella in the court of the *praefectus urbi*, Flavius Sabinus. It is of note that he was uncertain of his jurisdiction on this occasion. By the late second/early third century, as the *quaestiones perpetuae* were ceasing to function, the urban prefect dealt with most common public crime in Rome and within one hundred miles of the city. For discussion see Vitucci (1956) 50–81; Garnsey (1970) 90–98; Jones (1972) 90–118. For another interesting aspect of this office see Lendon (1997) 177–183.
- 177 See Tac. *Ann.* 13.28.1–4; Suet. *Claud.* 23; Gell. *NA.* 13.25.2; Dio 60.24.3, 69.7.1; *CJ.* 2.23.1; *Dig.* 34.1.3. Jones (1960) 86–98 argues for quite an extensive judicial role for the consuls, though he acknowledges the vagueness of the sources. His arguments, however, rely on practicality and are quite persuasive.
- 178 Juv. 13.154–161.
- 179 Mart. 2.17; Lyd. *Mag.* 1.34; *LTUR* 4.159–160.
- 180 See Anderson (1984) 116–117 for discussion.
- 181 The structure located near the temple of Tellus is called the *praefectura urbana*. An alternative location in the Forum of Trajan will be considered below.
- 182 Gellius (*NA.* 13.25.2) speaks of a man waiting for his friend, the consul, who is presiding over a court. There is no plural sense in this passage. Dio (69.7.1) says that Hadrian used to join the consuls when they heard cases. Here, Dio uses the plural “τοῖς ὑπάτοις”, “the consuls”. However, the generalized nature of the passage demands caution. In his description of Octavius Sagitta’s murder of one Pontia, Tacitus (*Ann.* 13.44.1–9) states that Pontia’s father reported it “*apud consules*”, “before the consuls”. This statement seems to contain more of a jurisdictional tone to it rather than serving as a plain description of those to whom he spoke, though perhaps such a differentiation relies too much upon nuance. The evidence seems to point both ways. I suggest that each consul held court separately in order to most effectively deal with the caseloads. To hear cases together would have been both inefficient and unique among the jurisdictional magistrates.
- 183 Gell. *NA.* 13.25.2.
- 184 For the most recent reconstructive drawings of this forum see Packer (1997). Anderson (1984) also believes that the court of the *praefectus praetorio* resided here as well. The jurisdiction of the *praefectus praetorio* developed quite late in the period under examination in this study. The earliest reference to a *praefectus praetorio* presiding over a judicial hearing is

- found in an anecdote concerning Cornelius Fronto, dating to the reign of Hadrian (Dio 69.18.3). By the time of the Severi, the prefect's jurisdiction had increased to such an extent that all cases within Italy beyond the 100-mile radius from the city fell to his court (SHA. *Sept. Sev.* 4). On the jurisdictional development of the *praefectus praetorio* see Howe (1942). More recently, see Peachin (1996) 165–166.
- 185 Anderson (1984) 161–165. Packer's 1997 work does not extend to these inscriptions.
- 186 For recent discussion see Boatwright (2000) 80–84. For evidence of direct imitation of the *summi viri* of the Forum of Augustus: SHA. *Alex. Sev.* 26.4.
- 187 Events that took place in this forum: records of unpaid taxes burned here by Hadrian (SHA. *Hadr.* 7.6); Marcus Aurelius sold state jewels to pay for Marcomannic wars (SHA. *Aurel.* 17.4, 21.9); Commodus gave *congiaria* (SHA. *Comm.* 2.1). For further events see *LTUR* 2.289–295.
- 188 E.g. *CTh.* 1.9.1, 4.12.5, 9.7.6, 9.17.3, 9.19.2.2, 10.1.2, 10.10.2, 10.10.31.
- 189 The basilica consists of a central space (24.973 × 88.14 m), lined with columns, as well as two apses, each with an opening of 41 m and a calculated radius of 22.03 m. At the back of each apse is a large niche (approx. 7.5 × 6 m). The open central area of the forum, in front of the Basilica, measures approximately 107 × 88 m. The porticoes on each side measure 14.7 m wide. Off each portico is an apse with an opening of 40 m and a radius of 21 m. All measurements are either given by Packer (1997) or are calculated using his plates. One must remember that only the central area of the basilica has been excavated and some explorations of the west apse have been made. The apses have not been excavated.
- 190 These numbers are based on Canadian football dimensions (110 × 65 yds) converted from yards to metres. For visual purposes, the final square footage includes the two 20-yard end zones.
- 191 *Pianta Marmorea*, II, Pl. XXVIII. For a plan drawing see Packer (1997) fig. 125.
- 192 Packer (1997) 244, 431.
- 193 Packer (1997) 243–244.
- 194 Packer (1997) 435–437.
- 195 Smith (1875) 289.
- 196 Giuliani and Verduchi (1993) 178. See Chapter Two.
- 197 Space of Basilica Julia: 1200 m². Divided among four tribunals: 300 m² per tribunal. Space of Basilica Ulpia: 2200 m². At 300 m² per tribunal: 7.3333 tribunals.
- 198 Anderson (1984) 166.
- 199 Anderson (1984) 166.
- 200 Tac. *Ann.* 13.28.4.
- 201 Tac. *Ann.* 13.28.1–3.
- 202 *Praefectus annonae* (his office became the *fiscus frumentarius* in the Flavian period): *Dig.* 1.2.2.33; Jolowicz (1972) 347; Robinson (1992) 157; *praefecti aerarii* became the permanent magistrates of the *aerarium Saturni* in 56 and the office survived until the time of Diocletian: Tac. *Ann.* 13.291–3; Suet. *Aug.* 36, *Ner.* 17. The *aerarium militare* was consistently managed by three *praefecti*: Dio 55.25.2.
- 203 Tac. *Ann.* 4.6.5; Plin. *Pan.* 36.4; *Dig.* 1.2.2.32; Crook (1995) 52–53. The title of this office evolved over time.
- 204 *Dig.* 1.15; *CJ* 1.43; Garnsey (1970) 95; Jolowicz (1972) 347; Nippel (1995) 95–98.
- 205 They seem to disappear from sight in the late Republic. See Garnsey (1970) 91 n. 3; Nippel (1995) 22–26.
- 206 See Kornemann in *RE* 4.1774–1811; Robinson (1992) 86–105.
- 207 Suet. *Aug.* 29.1.
- 208 Mart. 3.38.3–4. Seneca (*Ira* 2.9.4) also links the three *fora* and legal hearings.
- 209 App. *BC.* 2.15.102.
- 210 *Ars. Am.* 1.79–88.

- 211 Anderson (1984) 24–25 concludes that this must be a trial before a full jury (he incorrectly assumes advocates appear only for these types of trials), suggesting perhaps one of the centumviral tribunals before they moved to the Basilica Iulia.
- 212 Ulrich (1994) 144–145.
- 213 *Ars. Am.* 3.449.
- 214 *Rem. Am.* 659–668.
- 215 Augustus' forum, housing the *quaestiones perpetuae* and the courts of both the *praetor urbanus* and the *praetor peregrinus*, and the emperor's court on occasion, likely could not have accommodated any other courts.
- 216 Horace (*Ep.* 1.6.58–61) describes the forum as “*differtum*” – “packed”.
- 217 Ulrich (1994) 98, 101–104.
- 218 *Cic. Verr.* 2.154; *Plut. Sulla* 33; Ulrich (1994) 101.
- 219 Surface size of platform: Temple of Venus Genetrix: 59 m²; Temple of Divus Iulius: 140 m²; Temple of Castor (AD 6): 75 m² (Ulrich [1994] App.).
- 220 Ulrich (1994) App.
- 221 Dio 68.10.2.
- 222 Anderson (1984) 111.
- 223 *Ov. Ars. Am.* 1.67–86.
- 224 These calculations are based on the depiction of the area on the *FUR*. See Richardson (1992) 286. Ongoing excavations may revise these numbers.
- 225 *Quint. Inst.* 10.5.18.
- 226 The Basilica Iulia is a less likely location since the *centumviri* held their hearings within this structure. The *centumviri*, however, met every second day during a trial (see *Plin. Ep.* 5.9.1). Therefore, it is possible, if that had been the only space available, that another trial could have been interspersed between the days of the centumviral court sessions. Ulrich (1994) 159–160 mentions that both the Basilica Iulia and the Basilica Aemilia had “interior tribunals”. He does not elaborate.
- 227 *Hor. Ep.* 1.6.59.
- 228 *Hor. Sat.* 1.4.65–68.
- 229 *Dio* 57.7.2; 60.4.3; 66.10.5; *Suet. Dom.* 8.1; *Dio* 69.7.1.
- 230 *Dio* 60.4.3.
- 231 *Suet. Ner.* 17. We must be careful in interpreting of which forum Suetonius speaks.
- 232 *Mart.* 5.20.6.
- 233 *Hor. Ep.* 1.7.46–49.
- 234 *Suet. Claud.* 33.1; *Dio* 68.10.2.
- 235 *Suet. Aug.* 29.1.
- 236 *TPSulp* 13; *TH* 6.
- 237 *Juv.* 1.127–128.
- 238 *Mart.* 7.51.4. See also 8.44.6–8, which refers to the Forum of Augustus as well as that of Julius Caesar and the *Forum Romanum*.
- 239 Anderson (1984) 93.
- 240 *Juv.* 13.135.
- 241 *Mart.* 2.64.7.
- 242 *Sen. Controv.* 3.pr.12; *Quint. Inst.* 10.1.33, 11.3.27.
- 243 *Plin. NH.* 15.20.78, 19.6.23–24.
- 244 *Dio* 59.23.9.
- 245 *Sen. Controv.* 3.pr.12: “*cum in foro dico*”, “when I speak in the forum”.
- 246 *Tac. Dial.* 3.4: “*cum te tot amicorum causae, tot coloniarum et municipiorum clientelae in forum vocent*”, “when all the cases of your friends and those of colonies and municipalities call you into the forum”; 13.5: “*insanum ... et lubricum forum*”, “the frenzied and hazardous forum”.
- 247 *Fronto Ad Am.* 1.27.2: “*nam in forum descendit natalibus nobilis, de foro rediit eloquentia quam*

genere nobilior". The classifications and numbering used for Fronto's letters are those of van den Hout's 1988 Teubner edition.

248 Fronto *Ad M. Caes.* 5.42.1: "*quoniam ad agendum ad forum ibam*".

249 Suet. *Rhet.* 6: "*renuntiavit Foro*".

250 Use of the term "forum" to indicate legal activities was not a new development of the Principate. Cicero uses the term in such a way on occasion (e.g. *Brut.* 88.301, *Flac.* 70). Of course, it was not until the time of Julius Caesar that the singular term could be used to refer to multiple public spaces. Detailed examination of the evolving use of this word may be rewarding.

2 RECONSTRUCTION OF THE ROMAN COURTROOM

- 1 Quint. *Inst.* 11.3.127.
- 2 Quint. *Inst.* 6.1.37.
- 3 Plin. *Ep.* 6.33.3. Multiple advocates: e.g. Quint. *Inst.* 1.5.43; Plin. *Ep.* 2.19.1; Fronto *Ad M. Caes.* 3.4.1–2.
- 4 Quint. *Inst.* 6.4.8, 12.3.2, 11.3.131, 12.3.3. Pliny's freedman stood behind him during his speech in the senate defending Priscus (*Ep.* 2.11.15).
- 5 Plin. *Ep.* 2.14.6.
- 6 Quint. *Inst.* 5.7.32.
- 7 Sen. *Controv.* 7.4.7, 10.pr.3; Quint. 6.1.48; Plin. *Ep.* 6.33.3; Suet. *Ner.* 17.
- 8 Their portability was helpful in other circumstances, too. Suetonius (*Lul.* 84.3) mentions that the "*cum subselliis tribunalia*", "the tribunals with the benches" – helped fuel the pyre of Julius Caesar. This furthermore suggests that even on days when the courts clearly were not meeting, the benches either were left at the courts or were stored somewhere nearby.
- 9 Talbert (1984) 122–123.
- 10 Artistic representations of *bisellia* survive: e.g. coins: Mattingly (1923) #115–117 (Augustus and Agrippa on *bisellium*) 13 BC; reliefs: see tombs of Calventius Quietus and C. Munatius Faustus from the Necropolis at the Porta Ercolano at Pompeii: *ILS* 6372, 6373. For a photograph of Quietus' tomb see Mau (1899) fig. 232. For brief discussion of benches see Edmondson (1996) 92–93.
- 11 Dio 37.50.2, 56.31.3. For a single praetors' bench in the senate see Dio 56.31.3, 60.12.3. However, Dio also refers to the "benches" of the tribunes: 49.15.6. In addition, during Claudius' reign, the period to which Dio's comment in Book 60 refers, the number of praetors fluctuated between 14 and 18. Yet a single bench for this many people is impractical and thus Dio's reference to the "bench" of the praetors may be figurative, so caution is warranted. For benches in the senate house see Talbert (1984) 121–124.
- 12 Suet. *Ner.* 17.
- 13 Sen. *Controv.* 10.2.3.
- 14 Quint. *Inst.* 6.1.39.
- 15 Quint. *Inst.* 11.3.132. It would be interesting to know why such a gesture was "insulting".
- 16 Quint. *Inst.* 11.3.133.
- 17 Advocates: Quint. *Inst.* 11.3.156; Tac. *Dial.* 6.4; Plin. *Ep.* 1.23.2, 7.17.9. Defendant: Sen. *Controv.* 7.4.6. This passage relates an event that occurred during one of Cicero's speeches. Quintilian (11.1.44, 11.3.134) identifies cases of minor importance, "*de re levissima*", as occasions when the advocate could plead seated. We can assume such cases were private and involving lesser penalties.
- 18 Plin. *Ep.* 2.19.2. Translation of B. Radice. For an example of an advocate who walks a lot see Quint. *Inst.* 6.3.54.
- 19 Quint. *Inst.* 11.3.130; cf. Quint. *Inst.* 2.12.9. Also, when he does walk it should not be for many steps (Quint. *Inst.* 11.3.125–126).

- 20 Quint. *Inst.* 11.3.127.
- 21 Sen. *Controv.* 9.4.18
- 22 Quint. *Inst.* 6.1.46.
- 23 Clerks: Quint. *Inst.* 11.3.131; prompters: Quint. *Inst.* 12.3.3. In the court of the senate we learn that Pliny (2.11.15) had an attendant standing behind him (“*libertum meum post me stantem*”) while he delivered his speech in the trial of Marius Priscus. That he was standing is interesting. One would assume that the whole court was seated and that Pliny alone, as speaker, was the only person standing. Perhaps this man was handing Pliny props? Why was he standing also?
- 24 Quint. *Inst.* 12.3.1.
- 25 There is no evidence that the audience was seated in a hierarchical fashion, segregated by social rank or gender, such as was found in the theaters and amphitheaters of first-century Rome. For discussion of seating at theatrical events see Rawson (1987); Schnurr (1992); Edmondson (1996).
- 26 Quint. *Inst.* 6.1.39.
- 27 Quint. *Inst.* 11.3.131.
- 28 Quint. *Inst.* 11.3.132.
- 29 Quint. *Inst.* 11.3.56, 118.
- 30 Quint. *Inst.* 11.3.118.
- 31 Quint. *Inst.* 6.1.48.
- 32 Tac. *Dial.* 20.3.
- 33 Tac. *Dial.* 6.4.
- 34 Sen. *Controv.* 9.4.18; Quint. *Inst.* 12.10.74; Mart. 6.38.5, 7.72.10; Plin. *Ep.* 2.14.6, 6.33.3, 7.17.9; Suet. *Aug.* 93.
- 35 Sen. *Controv.* 3.pr.12.
- 36 No evidence suggests that there was any sort of raised seating, like modern-day bleachers, for the courtroom audience. Juvenal (7.45–47) suggests that such structures were used for *recitationes*.
- 37 Quint. *Inst.* 6.1.48; Plin. *Ep.* 6.33.3.
- 38 Tac. *Dial.* 39.3.
- 39 See Quint. 10.7.16, 12.8.3; Plin. 7.6.9, 7.17.9.
- 40 Plin. *Ep.* 7.17.9. Pliny suffered from such anxiety before speaking at the trial of Marius Priscus in the Senate (*Ep.* 2.11.14).
- 41 Plin. *Ep.* 4.16.2, 6.33, 7.6.9, 7.17.9; the criminal case is in 7.6.9.
- 42 Quint. *Inst.* 6.1.48.
- 43 Plin. *Ep.* 4.16.2.
- 44 Juv. 7.43–45.
- 45 Quint. *Inst.* 11.3.135.
- 46 Quint. *Inst.* 11.3.127.
- 47 An important passage is Quint. *Inst.* 11.3.127: “*Id fieri iudiciis privatis non potest. Verum breviora sunt spatia*”, “It is not possible to do this in private cases. In truth, the spaces are small”.
- 48 Tac. *Dial.* 39.1–3.
- 49 Vit. *De Arch.* 6.5.2.
- 50 For a detailed discussion of this court see Kelly (1976) 1–39 and more recently Gagliardi (2002). Gagliardi also discusses the evidence for the connection between the *Decemviri* and the *Centumviri* during the imperial period (p. 42–61).
- 51 For a line drawing of the Basilica see *LTUR* 1, fig. 93.
- 52 *LTUR* 1.177–179.
- 53 Plin. *Ep.* 6.33. Stairs appear to have been located in the south-west section of the building (Giuliani and Verduchi [1993] 178).
- 54 Suet. *Cal.* 37.1.

- 55 *LTUR* 1.178.
- 56 Richardson (1992) 52–53. Also see David (1983) 238.
- 57 *Tac. Ann.* 14.19.
- 58 E.g. *Quint. Inst.* 12.5.6.
- 59 *Quint. Inst.* 12.5.6.
- 60 The Basilica Iulia is visible in the *FUR* (18b–d). See *Pianta Marmorea* Tav.13.18b–d.
- 61 *Plin. Ep.* 6.33.4.
- 62 However, we must be careful about taking Attia Virola's case as the typical court location. This case was before the united four courts of the *centumviri*. It is possible that when the courts met separately the space within the aisles was adequate, but when a case called for the united courts – a clear indication of the importance of the case and the litigants – the court moved to the centre area. Still, if confined to the aisles the individual courts would have been left with very little usable space.
- 63 *Plin. Ep.* 2.14.11.
- 64 *Quint. Inst.* 12.5.6.
- 65 *Plin. Ep.* 4.16.1–3. We can assume that Pliny was speaking before one of the four courts. Had he been before the united court, he surely would have informed his readers.
- 66 *Plin. Ep.* 2.14.8.
- 67 E.g. *Plin. Ep.* 4.24.1, 6.33.
- 68 *Plin. Ep.* 6.33.3–4.
- 69 Sherwin-White (1966) 183 thinks they do.
- 70 Sherwin-White (1966) 183. He cites 4.16, which contains nothing of use, and *Tac. Ann.* 1.75.1 which I have argued in Chapter One shows that Tiberius sat beside the praetor's tribunal, not on it. These two passages do not seem strong evidence.
- 71 It is unclear how many *decemviri* attended each court. Ten men do not divide evenly into four courts. Pliny (*Ep.* 5.9.2) mentions the attendance of multiple *decemviri* at a case in which he was involved. It appears that the case was not before the united four courts; surely Pliny would have indicated if it was. This suggests that when the four courts met separately, more than one *decemviri* attended each.
- 72 E.g. *Quint. Inst.* 12.5.6; *Mart.* 6.38; *Plin. Ep.* 2.14.4, 6, 5.9.2, 6.33.3.
- 73 The calculations to reach these results: the central nave measures 75×16 m (246.1×52.5 ft) resulting in $1,200$ m² ($12,918$ ft²). Dividing this total by four (for the four courts) results in 300 m² ($3,229.5$ ft²) per court. To determine the density level of any space (meaning how much of the actual square footage is usable space) the standard criterion used by architects for public seating is 85 to 90 percent. Thus 300 m² ($3,229.5$ ft²) multiplied by 0.85 gives an area of 255 m² ($2,745.1$ ft²). For people of modern western culture to be comfortable the average person needs 0.84 m² (9 ft²) of space. However, if benches are used, the expectation for personal space is far lower. The modern criteria for assembly spaces with concentrated usage, such as is found in auditoriums, churches, or dance floors, call for 0.65 m² (7 ft²) per person. So if we next divide 255 m² ($2,745.1$ ft²) by 0.65 (7 ft²) we reach a total of 392 persons. These calculations assume everyone was seated on benches. If one attempts to allow for a sizeable standing audience in the court space found within the central nave area the numbers increase substantially. Hoke (2000) 6 sets the maximum standing capacity for an elevator at six persons per m² (11 ft²) which allows 0.17 m² (1.83 ft²) per person. Hoke (2000) 8 determines that in assembly areas with concentrated usage (as mentioned above), one must allow 0.28 m² (3 ft²) per person. Romans standing at a trial probably could not endure being so tightly packed as one might find in an elevator for extended lengths of time. If we use the 0.28 m² criteria and hypothesize that perhaps one-quarter of the court space 63.75 m² (686.3 ft²) of the 255 m² ($2,745.1$ ft²) was standing space only, 228 people could stand in that space. Using the 0.65 m² (7 ft²) criteria for the remaining area of 191.25 m² ($2,058.8$ ft²), we can place 294 seated people in the courtroom. In total then, adding together the number of seated

and standing people, we can estimate that 522 people could be accommodated within the courtroom at full capacity. This number is no doubt high since we have not set aside any space for the open central area of the court in which the advocate spoke. As a rough estimate, we should shave off perhaps 50–75 people to allow for that space. A more conservative estimate then would set the number of people per court at approximately 450–475.

3 THE LITIGANT

- 1 Further research on this topic may produce opposing results.
- 2 Plin. *Ep.* 2.14.1. The four cases in the centumviral court: 1.5.5, 1.18.3–4, 5.1.6–8, 6.33.2–6. Indirectly Pliny tells us why he does not discuss more of the cases: “*Sunt enim pleraque parvae et exiles; raro incidit vel personarum claritate vel negotii magnitudine insignis*”, “Most of them are insignificant and dreary; rarely does one stand out for the renown of the persons involved or the importance of the issue.” Historians of the Roman courtroom, of course, would have appreciated his inclusion of even the dreariest of cases!
- 3 See Kelly (1976) 71–92.
- 4 E.g. Tac. *Ann.* 14.50; Plin. *Ep.* 6.22.1–6, 6.31.4–6, 6.33.2–6, 7.6.8–13; the trial of Nonius Asprenas (Plin. *NH.* 35.164; Quint. *Inst.* 10.1.22; Suet. *Aug.* 56.3; Dio 55.4.3).
- 5 Quint. *Inst.* 9.2.34.
- 6 Male: Sen. *Controv.* 2.5.13, 4.pr.10, 7.4.7, 7.5.12, 7.6.22, 9.4.18, 9.4.19; Sen. *Clem.* 1.9.10; Quint. *Inst.* 4.1.11 (7.2.5, 26; Tac. *Dial.* 38.2 – connected to same case), 6.1.21, 6.1.50, 6.3.78 (Sen. *Controv.* 2.4.11 – may refer to the same case or to a different one), 6.3.72, 6.3.100, 7.2.24, 9.2.34, 10.1.22 (Suet. *Aug.* 56.3, Plin. *NH.* 35.164 – connected to the same case); *Acta Isidori*; Jos. *AJ.* 17.317–320, 344; Jos. *BJ.* 2.245–246=AJ. 20.134–136; *TH* 6; *TPSulp* 13, 14 (*TPSulp* 13 and 14 may refer to the same case), 15; Tac. *Ann.* 2.34.3, 3.36.2–3, 3.38, 14.50; Plin. *Ep.* 1.18.3–4, 4.17.1–4, 4.22.1, 5.1.6–8, 6.22.1–6, 6.31.3, 6.31.4–6, 6.31.7–12, 6.33.2–6, 7.6.8–13, 7.7.2, 7.19.5; Suet. *Aug.* 33.1, 51.2, 56.4 (Dio 55.4.2, Macrob. *Sat.* 2.4.27 – connected to the same case), Suet. *Aug.* 56.4 (another case in the same passage), *Tib.* 8.1, *Tib.* 8.1 (another case and also reported in Dio 54.3.6), *Claud.* 15.2 (three cases in the same passage), *Claud.* 15.4, 38.2, *Vit.* 7.2; Fronto *Ad. M. Caes.* 3.3.2–4, 5.49.1; Gell. *NA.* 1.22.6, 11.7.3, 14.2.4–25; *Martyrdom of Ptolemaeus and Lucius, Martyrdom of Justin, Chariton, Charito, Evelpistus, Hierax, Paeon, and Librian*; Dio 54.3.1, 60.29.4 (Tac. *Ann.* 11.1 relates to the same case) 73.12.2. Female: Sen. *Controv.* 9.5.15; Quint. *Inst.* 4.1.19, 4.2.106 (6.1.20, 10.1.22 connected with the same case), 6.1.40, 6.1.50, 8.5.16, (9.4.31 connected with the same case), 8.5.17, 9.2.34; *TH* 13, 14 (*TH* 13 and 14 are related to the same case); Tac. *Ann.* 2.34.3, 3.36.2–3, 4.22.4; Juv. 6.638–640; Plin. *Ep.* 1.5.5, 4.17.1–4, 6.31.4–6, 6.33.2–6, 7.6.8–13; Suet. *Claud.* 15.2; Gell. *NA.* 3.16.12. References that may refer to a case, although uncertainty remains so they were not included in the statistics: Quint. *Inst.* 6.1.43 (however, if this does refer to a case it may be the same case mentioned in Quint. *Inst.* 6.3.78 and/or Sen. *Controv.* 2.4.11); 6.3.100 (the case of Hispo is clear, but whether the matter involving Fulvius Propinquus was a case is uncertain); Suet. *Vesp.* 13.
- 7 Male: Sen. *Controv.* 2.5.13, 7.5.12, 7.6.22, 9.4.18, 9.4.19; Quint. *Inst.* 6.1.21, 6.1.43 (6.3.78, Sen. *Controv.* 2.4.11 – may refer to the same case or to different ones – Cassius Severus is mentioned in each passage, and one passage identifies Fabius Maximus as Cassius’ opponent), 6.1.50, 6.3.72, 6.3.100, 7.2.24, 10.1.22 (Suet. *Aug.* 56.3, Plin. *NH.* 35.164 – connected to the same case); *Acta Isidori*; Jos. *AJ.* 17.317–320, 344; Jos. *BJ.* 2.245–246=AJ. 20.134–136; *TH* 6; *TPSulp* 13, 14 (*TPSulp* 13 and 14 may refer to the same case), 15; Tac. *Ann.* 2.34.3, 3.36.2–3, 3.38, 14.50; Plin. *Ep.* 1.18.3–4, 4.17.1–4, 4.22.1, 5.1.6–8, 6.22.1–6, 6.31.3, 6.31.7–12, 6.33.2–6, 7.19.5; Suet. *Aug.* 51.2, 56.4 (Dio 55.4.2, Macrob. *Sat.* 2.4.27 – connected to the same case), 56.4 (another case in the

- same passage), *Tib.* 8.1, *Tib.* 8.1 (another case in the same passage and also reported in Dio 54.3.6), *Vit.* 7.2; Fronto *Ad. M. Caes.* 3.3.2–4, 5.49.1; *Martyrdom of Ptolemaeus and Lucius, Martyrdom of Justin, Chariton, Charito, Evelpistus, Hierax, Paeon, and Liberian*; Dio 54.3.1, 60.29.4 (Tac. *Ann.* 11.1 relates to the same case) 73.12.2. Female: Sen. *Controv.* 9.5.15; Quint. *Inst.* 4.2.106 (6.1.20, 10.1.22 connected with the same case), 6.1.50, 8.5.16, (9.4.31 connected with the same case), 8.5.17, 9.2.34; *TH* 13, 14 (*TH* 13 and 14 are related to the same case); Tac. *Ann.* 2.34.3, 3.36.2–3, 4.22.4; Juv. 6.638–640; Plin. *Ep.* 1.5.5, 4.17.1–4, 6.31.4–6, 6.33.2–6.
- 8 Male: Sen. *Controv.* 7.5.12; Quint. *Inst.* 4.1.11 (7.2.5, 26; Tac. *Dial.* 38.2 – connected to the same case), 6.3.78 (Sen. *Controv.* 2.4.11 – may refer to the same case or to a different one), 10.1.22 (Suet. *Aug.* 56.3, Plin. *NH.* 35.164 – connected to the same case); *Acta Isidori*; Jos. *AJ.* 17.317–320, 344; Jos. *BJ.* 2.245–246=AJ. 20.134–136; Tac. *Ann.* 2.34.3, 3.38, 14.50; Plin. *Ep.* 1.18.3–4, 4.22.1, 5.1.6–8, 6.22.1–6, 6.31.3, 6.31.4–6, 6.31.7–12, 6.33.2–6, 7.6.8–13, 7.7.2; Suet. *Aug.* 51.2, 56.4 (Castricius), *Tib.* 8.1, *Tib.* 8.1 (another case and also reported in Dio 54.3.6), *Claud.* 15.2 (three cases in the same passage), *Claud.* 15.4; Fronto *Ad. M. Caes.* 3.3.2–4; Gell. *NA.* 1.22.6, 11.7.3, 14.2.4–25; *Martyrdom of Ptolemaeus and Lucius, Martyrdom of Justin, Chariton, Charito, Evelpistus, Hierax, Paeon, and Liberian*; Dio 54.3.1, 60.29.4 (Tac. *Ann.* 11.1 relates to the same case). Female: Sen. *Controv.* 9.5.15; Tac. *Ann.* 2.34.3; Plin. 1.5.5, 6.31.4–6, 6.33.2–6, 7.6.8–13; Suet. *Claud.* 15.2; Gell. *NA.* 3.16.12. Cases in which the specific court is not mentioned but an educated guess is possible: Sen. *Controv.* 2.5.13 (*quaestio*?); Quint. *Inst.* 4.1.19 (court of Queen Berenice?), 7.2.24 (*quaestio*?), 8.5.17 (centumviral court?), 9.2.34 (centumviral court?); Tac. *Ann.* 4.22.4 (*quaestio*, though perhaps senate?); Juv. 6.638–640 (*quaestio* or emperor?); Suet. *Aug.* 33.1 (emperor?), *Vesp.* 13 (emperor?).
- 9 Emperor's court: Sen. *Controv.* 7.5.12; *Acta Isidori*; Jos. *AJ.* 17.317–320, 344, *BJ.* 2.245–246=AJ. 20.134–136; Tac. *Ann.* 14.50; Plin. *Ep.* 4.22.1., 6.22.1–6, 6.31.3, 6.31.4–6, 6.31.7–12; Suet. *Aug.* 51.2, *Tib.* 8.1, *Claud.* 15.2 (3 cases), 15.4; Fronto *Ad. M. Caes.* 3.3.2–4; Gell. *NA.* 3.16.12; Dio 60.29.4; *Quaestio*: Quint. *Inst.* 10.1.22; Tac. *Ann.* 3.38; Suet. *Aug.* 56.4, *Tib.* 8.1; Dio 54.3.1; centumviral court: Sen. *Controv.* 9.5.15; Quint. *Inst.* 4.1.11 (7.2.5, 26; Tac. *Dial.* 38.2 – connected to the same case); Plin. *Ep.* 1.5.5, 1.18.3–4, 5.1.6–8, 6.33.2–6. We also hear of cases before the praetor: Quint. *Inst.* 6.3.78; Tac. *Ann.* 2.34.3; Gell. *NA.* 1.22.6(?); cases before the *praefectus urbi*: Gell. *NA.* 11.7.3; *Martyrdoms of Ptolemaeus and Lucius, Martyrdoms of Justin, Chariton, Charito, Evelpistus, Hierax, Paeon, and Liberian*; cases before a representative of the emperor: Quint. *Inst.* 6.3.100; Plin. *Ep.* 7.6.8–13; cases before a single judge: Sen. *Clem.* 1.9.10; Gell. *NA.* 14.2.4–25.
- 10 Male: Sen. *Controv.* 2.5.13; Quint. *Inst.* 4.1.11 (7.2.5, 26; Tac. *Dial.* 38.2 – connected to the same case), 6.1.50, 7.2.24, 10.1.22 (Suet. *Aug.* 56.3, Plin. *NH.* 35.164 – connected to the same case); Jos. *BJ.* 2.245–246=AJ. 20.134–136; Tac. *Ann.* 3.36.2–3, 3.38, 14.50; Plin. *Ep.* 4.22.1, 5.1.6–8, 6.22.1–6, 6.31.4–6, 6.31.7–12, 6.33.2–6, 7.6.8–13; Suet. *Aug.* 33.1, 51.2, 56.4 (Dio 55.4.2, Macrobian *Sat.* 2.4.27 – connected to the same case), Suet. *Aug.* 56.4 (another case in the same passage), *Tib.* 8.1 (case involving Fannius Caepio, which is also reported in Dio 54.3.6), *Claud.* 15.2, *Claud.* 15.4, *Vit.* 7.2; Fronto *Ad. M. Caes.* 3.3.2–4, 5.49.1; Gell. *NA.* 14.2.4–25; *Martyrdom of Ptolemaeus and Lucius, Martyrdom of Justin, Chariton, Charito, Evelpistus, Hierax, Paeon, and Liberian*. Female: Sen. *Controv.* 9.5.15; Quint. *Inst.* 6.1.50; *TH* 13, 14 (*TH* 13 and 14 are related to the same case); Tac. *Ann.* 3.36.2–3, Juv. 6.638–640; Plin. 6.31.4–6, 6.33.2–6, 7.6.8–13; Gell. *NA.* 3.16.12. Cases in which the charge is not clearly supplied but an educated guess is possible: Sen. *Controv.* 4.pr.10 (*stuprum*?); Quint. *Inst.* 9.2.34 (inheritance?); *Acta Isidori* (*maiestas*?); Jos. *AJ.* 17.317–320, 344 (various charges?); Tac. *Ann.* 2.34.3 (financial?); Plin. *Ep.* 7.19.5 (*maiestas*?); Dio 54.3.1 (*maiestas*?); Quint. *Inst.* 8.5.17 (inheritance or murder?), 9.2.34 (inheritance?); Tac. *Ann.* 2.34.3 (financial?), 4.22.4 (poisoning?).
- 11 Male defendants: Sen. *Controv.* 2.5.13, 4.pr.10, 7.4.7, 7.5.12, 7.6.22, 9.4.19; Quint. *Inst.*

- 4.1.11 (7.2.5, 26; Tac. *Dial.* 38.2 – connected to the same case), 6.1.21, 6.1.50, 6.3.78 (Sen. *Controv.* 2.4.11 – may refer to the same case or to a different one), 6.3.72, 6.3.100, 7.2.24, 10.1.22 (Suet. *Aug.* 56.3, Plin. *NH.* 35.164 – connected to the same case); *Acta Isidori*; Jos. *AJ.* 17.317–320, 344; Jos. *BJ.* 2.245–246=*AJ.* 20.134–136; *TH* 6; *TPSulp* 13, 14 (*TPSulp* 13 and 14 may refer to the same case), 15; Tac. *Ann.* 3.38, 14.50; Plin. *Ep.* 4.22.1, 5.1.6–8, 6.22.1–6, 6.31.3, 6.31.4–6, 6.31.7–12, 7.6.8–13, 7.19.5; Suet. *Aug.* 33.1, 51.2, 56.4 (Dio 55.4.2, Macrob. *Sat.* 2.4.27 – connected to the same case), Suet. *Aug.* 56.4 (another case in the same passage), *Tib.* 8.1, *Tib.* 8.1 (another case and also reported in Dio 54.3.6), *Claud.* 15.2 (2 men), *Claud.* 15.4, *Vit.* 7.2; Fronto *Ad. M. Caes.* 5.49.1; Gell. *NA.* 14.2.4–25; *Martyrdom of Ptolemaeus and Lucius, Martyrdom of Justin, Chariton, Charito, Evelpistus, Hierax, Paeon, and Liberian*; Dio 54.3.1, 60.29.4 (Tac. *Ann.* 11.1 relates to the same case) 73.12.2. Male plaintiffs: Sen. *Controv.* 2.4.11, 7.6.22, 9.4.18; Quint. *Inst.* 4.1.11 (7.2.5, 26; Tac. *Dial.* 38.2 – connected to the same case), 10.1.22 (Suet. *Aug.* 56.3, Plin. *NH.* 35.164 – connected to the same case); *Acta Isidori*; *TH* 6; *TPSulp* 13, 14 (*TPSulp* 13 and 14 may refer to the same case), 15; Tac. *Ann.* 2.34.3, 3.36.2–3, 14.50; Plin. *Ep.* 4.17.1–4, 5.1.6–8, 6.22.1–6, 6.31.4–6, 6.31.7–12, 6.33.2–6; Suet. *Tib.* 8.1 (Tiberius), *Claud.* 15.2, *Vit.* 7.2; Gell. *NA.* 14.2.4–25. A case where it is likely the mentioned litigant is the defendant: Suet. *Vesp.* 13. In Quint. *Inst.* 9.2.34 it is possible that Publius Novanus Gallio is a plaintiff. In Pliny's letter, 1.18.3–4, we cannot identify the roles played by Junius Pastor and the men who are of great influence and friends of the emperor. In Fronto's letter, *Ad. M. Caes.* 3.3.2–4, it is difficult to determine the participants in the case involving Herodes, and we can say nothing with certainty as to the roles each party undertook.
- 12 Female defendants: Sen. *Controv.* 9.5.15; Quint. *Inst.* 4.2.106 (6.1.20, 10.1.22 connected with the same case), 6.1.40, 8.5.16, (9.4.31 connected with the same case), 8.5.17, 9.2.34; *TH* 13, 14 (*TH* 13 and 14 are related to the same case); Tac. *Ann.* 2.34.3, 3.36.2–3, 4.22.4; Juv. 6.638–640; Plin. *Ep.* 4.17.1–4, 6.31.4–6, 6.33.2–6; Gell. *NA.* 3.16.12. Female plaintiffs: Quint. *Inst.* 6.1.50; *TH* 13, 14 (*TH* 13 and 14 are related to the same case); Plin. *Ep.* 6.33.2–6, 7.6.8–13. Cases where it is likely the mentioned litigant is the defendant: Plin. *Ep.* 1.5.5; Suet. *Claud.* 15.2. In *TH* 13 and 14 Petronia is likely the plaintiff, Calatoria Themis, the defendant. See Metzger (2005) 159.
- 13 Sen. *Controv.* 2.4.11, 7.6.22, Quint. *Inst.* 4.1.11 (7.2.5, 26; Tac. *Dial.* 38.2 – connected to the same case), 6.1.50, 10.1.22 (Suet. *Aug.* 56.3, Plin. *NH.* 35.164 – connected to the same case); *Acta Isidori*; Jos. *AJ.* 17.317–320, 344; Jos. *BJ.* 2.245–246=*AJ.* 20.134–136; *TH* 6, *TH* 13, 14 (*TH* 13 and 14 are related to the same case); *TPSulp* 13, 14 (*TPSulp* 13 and 14 may refer to the same case), 15; Tac. *Ann.* 2.34.3, 3.36.2–3, 14.50; Plin. *Ep.* 1.18.3–4, 4.17.1–4, 5.1.6–8, 6.22.1–6, 6.31.4–6, 6.31.7–12, 6.33.2–6, 7.6.8–13; Suet. *Tib.* 8.1 (Caepio case – also reported in Dio 54.3.6), *Vit.* 7.2; Fronto *Ad. M. Caes.* 3.3.2–4; Gell. *NA.* 14.2.4–25; Philostr. *VS.* 2.30.622–3. In two cases, two individuals are mentioned. While in each case one is clearly a litigant of the dispute, it is not possible to conclusively identify the other individual as the opponent. If we do accept this identification, then one party from each side is identified: Quint. *Inst.* 9.2.34, Suet. *Claud.* 15.2 (woman refusing to recognize son).
- 14 Kelly (1976) 71–92.
- 15 *Acta Isidori*; Jos. *AJ.* 17.317–320, 344; Plin. *Ep.* 6.22.1–6.
- 16 Sen. *Controv.* 2.4.11, Quint. *Inst.* 6.1.43, 6.3.78; Tac. *Ann.* 3.38.2; Plin. *Ep.* 6.31.3.
- 17 *TPSulp* 13–15; Plin. *Ep.* 6.31.7–12; Suet. *Aug.* 56.4.
- 18 Quint. *Inst.* 4.1.19; Tac. *Ann.* 2.34.3, 4.22.4; Plin. *Ep.* 1.5.5, 4.17.1–4.
- 19 *TH* 13 and 14; Plin. *Ep.* 6.31.4–6; Quint. *Inst.* 8.5.17–19.
- 20 Petronia: *TH* 13–15; Archelaus: Suet. *Tib.* 8.1; Dio 57.17.3; *PIR*² A 1023; Berenice: Quint. *Inst.* 4.1.19. This case likely took place sometime when she was in Rome between 75 and 79 (Dio 66.15.4, 66.18.1).
- 21 Millar (1977) 228–240 considers this difficulty.

- 22 Suet. *Ner.* 7.2; Tac. *Ann.* 12.58.1–2.
- 23 Suet. *Tib.* 8.1.
- 24 Sen. *Controv.* 7.5.12.
- 25 CIL 9.5420. The case involving Herodes Atticus (Fronto *Ad. M. Caes.* 3.3.2) must be mentioned as well. This case, however, is complicated still further by our inability to determine if the Athenians were directly involved in the case itself.
- 26 Pliny represented Comum and Firmum (2.5.3, 6.18.1), but he is silent about the court. Perhaps this silence proves it was not in the emperor's court, unless appearing in that court was so common as to not warrant comment. Domitius Afer possibly represented the people of Augusta Taurinorum (Charis I p. 184B=145K).
- 27 Plin. *Ep.* 6.18.1.
- 28 Sen. *Ira* 3.33.1. See also Quint. *Inst.* 8.3.14.
- 29 Mart. 2.32.5; Juv. 7.158–170, 13.135–139, 13.174–179, 16.40–41; Plin. *Ep.* 4.12.2–4. Among the cases already considered, several are monetary in nature: Quint. *Inst.* 6.1.50; Tac. *Ann.* 2.34.3(?), 3.36.2–3; Fronto *Ad. M. Caes.* 5.49.1; Gell. *NA.* 14.2.4–25.
- 30 Quint. *Inst.* 11.1.58; Juv. 15.135–137. It is puzzling that we do not hear of more cases. The role of the tutor may, in fact, hide young clients in the historical record. All children had tutors, boys until age 14, girls until age 12, at which time the latter entered *tutela mulieris*. A tutor served as a ward's representative in a legal dispute, i.e. he was the actual party of the suit in place of the ward (Gai. *Inst.* 4.99). Thus, children were likely involved in much litigation, but since the tutors were their representatives we hear only of them and not of the children. A child can be identified as a litigant in only one case: Quintilian (*Inst.* 6.1.46) mentions an advocate who carried his child client around the court for dramatic effect. Since the child was of a size to be carried, a tutor surely was involved.
- 31 Mart. 2.32.3–4; Juv. 16.36–39; Suet. *Aug.* 33.2. Among the cases used in the statistical analysis: Quint. *Inst.* 4.1.11 (7.2.5, 26; Tac. *Dial.* 38.2 also refer to same case), 8.5.17(?), 9.2.34(?); Plin. *Ep.* 7.6.8–13.
- 32 Quint. *Inst.* 6.3.32; Mart. 10.87.11–12; Juv. 3. 288–298, 7.115–117. Among the cases used in the calculations at the opening of this chapter: *TH* 13 and 14; Suet. *Claud.* 15.2.
- 33 Quint. *Inst.* 11.1.66; Suet. *Claud.* 25.1; Dio 68.1.2.
- 34 Sen. *Ira* 3.33.1; Quint. *Inst.* 4.1.42, 11.1.58, 66.
- 35 Sen. *Controv.* 2.6.10.
- 36 Quint. *Inst.* 11.1.58.
- 37 Sen. *Ira* 2.7.3. Among the cases included in this chapter's earlier calculations, we also hear of a daughter, Attia Viriola (Plin. *Ep.* 6.33.2–6), attacking her father's will.
- 38 Sen. *Ira* 2.7.3; Quint. *Inst.* 11.1.61. One case used in the calculations at the opening of this chapter involved Curianus (Plin. *Ep.* 5.1.6–8) challenging his disinheritance by his mother.
- 39 Mart. 10.87.13.
- 40 Juv. 6.242–43: “*nulla fere causa est in qua non femina litem moverit. Accusat Manilia, si rea non est*”, “rarely is there any case in which the suit is not stirred up by a woman. If Manilia isn't the defendant, she accuses.”
- 41 For previous discussion of this topic see the excellent contributions of Kelly (1966) 1–84 and Garnsey (1970) 207–218.
- 42 Suet. *Aug.* 29.1, *Vesp.* 10.
- 43 Juv. 16.47.
- 44 There were requirements concerning how much time litigants would be allowed for travel to Rome. The basic rate used was twenty miles per day (*Dig.* 2.11.1, 50.16.3.pr.).
- 45 Litigants from out of town did not always make the trip themselves to Rome. In *TH* 27 we find that Lucius Faenius Eumenes and Gaius Sulpicius Faustus had both appointed *cognitores* (agents) to forward their disputes before the courts in the Forum of Augustus. It appears clear from this text that if litigants were using agents, the *vadimonium* for the transfer was made between the two agents directly. We do not know if their status as

- agents would have been explicit in the document; no such examples survive. If their role as agents was not indicated, it may be that among other surviving *vadimonia* we are, in fact, finding agents rather than litigants. We may have one *vadimonium* in which an agent is one of the participants. Among the *vadimonia* surviving from a lawsuit in which we know (from various other documents in the collection) that Calatoria Themis and Petronia Iusta were the litigants (*TH* 13–15) we find a man, M. Calatorius Speudon, making a *vadimonium* with Petronia to appear in the Forum of Augustus. The similarity of his name to Calatoria suggests he was her relative. It is possible that he was acting as a *cognitor* for Calatoria as Metzger (2005) 156 suggests. Unfortunately, we cannot rule out the possibility that Calatoria had died by this time, as it appears a year had passed since the earlier *vadimonia*, and he had inherited the case from her and thus was the litigant.
- 46 For additional discussion of this passage see Kelly (1966) 49–50; Garnsey (1970) 217–218.
- 47 Sen. *Controv.* 10.1.7.
- 48 Sen. *Controv.* 10.1.2.
- 49 Mart. 2.32.1–9.
- 50 Plin. *Ep.* 9.13.4.
- 51 Sen. *Controv.* 10.1.7.
- 52 Sen. *Controv.* 7.4.7.
- 53 Sen. *Controv.* 10.1.7.
- 54 Ov. *Nux* 41–42. In the late republic some criminal laws seem to have included *praemia* (rewards) for litigants who were successful in prosecuting individuals under those laws. Among these rewards were *provocatio* (the right of a citizen in the provinces to appeal his case to a Roman magistrate), citizenship, and promotion in senatorial rank. We hear of only one occasion when a reward of this nature may have been given: a freedman is permitted to sit in the theater seats reserved for magistrates' attendants, located behind the fourteen rows of the *equites*, after he has successfully prosecuted an equestrian (Tac. *Ann.* 16.12.2. The specific charges are unknown. For discussion of *praemia* in the republican period see Russell (1950); Alexander (1985).
- 55 *FIRA* 1.44. col. II, 11–18. Claudius introduced measures to combat the practice: *FIRA* 1.44. col. III. 4–9. See also Suet. *Claud.* 15.2; Dio 60.28.6.
- 56 Quint. *Inst.* 7.2.30, 12.9.10.
- 57 Quint. *Inst.* 7.2.33.
- 58 Fronto *Ad. M. Caes.* 3.3.2–3.
- 59 Sen. *Clem.* 1.9.10.
- 60 Hor. *Sat.* 2.1.47–50.
- 61 Suet. *Vit.* 7.2.
- 62 Sen. *Controv.* 2.5.17, 3.pr.14; Plin. *NH.* 16.91.242; Quint. *Inst.* 6.1.50. See Tac. *Ann.* 3.22; Suet. *Tib.* 49.1 for Manius Aemilius Lepidus' unsuccessful defence of his sister, Aemilia Lepidia, in the senatorial court. Vipstanus Messala also appeared in the senate to support his brother, Aquilius Regulus (Tac. *Hist.* 4.42). However, Tacitus does not make the nature of the hearing, nor Vipstanus' actual involvement, clear.
- 63 Suet. *Aug.* 56.4; Dio 55.4.2; Macrobi. *Sat.* 2.4.27.
- 64 Macrobi. *Sat.* 2.4.27.
- 65 E.g. respectively, Gell. *NA.* 1.22.6; Hor. *Sat.* 1.9.74–78.
- 66 Quint. *Inst.* 6.3.72.
- 67 Val. Max. 8.3.1–3.
- 68 *TH* 15.
- 69 Tac. *Ann.* 2.34.3
- 70 Sen. *Controv.* 3.pr.5.
- 71 Plin. *Ep.* 4.22.2, 6.22.2
- 72 Sen. *Controv.* 7.5.12; Jos. *BJ.* 2.245–246; Plin. *Ep.* 6.31.11; Suet. *Claud.* 15.2, 3.

- 73 Quint. *Inst.* 6.3.78. Based on Suet. *Controv.* 3.pr.5 it is likely that Cassius was the plaintiff.
- 74 E.g. Quint. *Inst.* 4.5.20, 6.1.37, 6.1.39, 6.1.46, 7.2.5; Suet. *Claud.* 15.2; Gell. *NA.* 1.22.6, 14.2.7.
- 75 Plin. *Ep.* 4.17.1–4.
- 76 Suetonius (*Claud.* 15.2) reports that Claudius was prone to decide in favor of the present party when one was absent, without waiting to hear if the latter's reason was valid. It is unclear whether Claudius ruled in this way if the absent litigant's advocate was present. It was perhaps the advocate's job to plead his client's excuse – in which case Claudius may have ruled against a litigant's case even if his advocate were present.
- 77 Hor. *Sat.* 1.9.35–42.
- 78 For more in-depth discussion of this passage see Metzger (2005) 166–171.
- 79 Ov. *Ars Am.* 1.460, *Fast.* 1.22; Mart. 1.49.35, 2.24.2, 5.16.6, 12.52.2.
- 80 Plin. *Ep.* 6.23.1.
- 81 Suet. *Claud.* 15.4.
- 82 Tac. *Ann.* 11.5.2.
- 83 Suet. *Claud.* 15.2: “*palliatum*”. This is an adjective derived of the noun *pallium*, which was the Latin word for the Greek *himation*, the outer garment of characteristic Greek dress.
- 84 Tac. *Dial.* 12.1; Juv. 15.131–135. Adopting such clothing as a defendant dates back to the republican period, e.g. Cato *Orig.* fr. 107; Cic. *Cael.* 4, *Clu.* 18.
- 85 Mart. 2.36.3, 2.74.1–7. The terminology found in connection with both clothing and toilette of defendants is difficult. The two words most commonly found are *sordes* and *squalor*. The problem is their similar nature. Quintilian (*Inst.* 6.1.33) uses both the terms in one passage, which suggests that he believed them to apply to different things; I would then suggest that perhaps *sordes* referred to clothing while *squalor* referred to toilette. Further discussion of the complicated vocabulary associated with mourning clothes is found in Olson (2006). I thank Dr. Olson for providing me with a copy of this study before its publication.
- 86 See Ov. *Am.* 3.9.52; Tac. *Ann.* 16.10; Apul. *Met.* 4.34; Treggiari (1991) 489–490. For visual representations of mourning women with loosened hair see the marble relief found in Paris depicting a death-bed scene, and the famous marble relief found in Amiternum depicting a funeral procession. For images of these reliefs see Toynbee (1971) pls. 10, 11.
- 87 E.g. Tac. *Ann.* 13.32.
- 88 Quint. *Inst.* 6.1.30, 33.
- 89 Sen. *Controv.* 10.1.7.
- 90 Suet. *Aug.* 32.2.
- 91 *FIRA* 1.44, col. II, 14; Smallwood (1967) no. 367. See also Suet. *Claud.* 15.2; Dio 60.28.6.
- 92 Suet. *Vit.* 8.1.
- 93 Quint. *Inst.* 6.3.78.
- 94 Gell. *NA.* 1.22.6.
- 95 Gell. *NA.* 14.2.7–8.
- 96 Juvenal (6.244–245) mentions that women are always full of advice for their advocate, and even try to write the opening of the speech for him. It is possible that the women Juvenal had in mind were attempting to give advice within the courtroom, but since this is not clearly stated, the passage has not been included here.
- 97 Quint. *Inst.* 4.5.20.
- 98 Quint. *Inst.* 4.5.20.
- 99 Quint. *Inst.* 6.1.37.
- 100 Quint. *Inst.* 6.1.38.
- 101 Sen. *Controv.* 9.6.12, 10.1.6; Tac. *Dial.* 12.1; Juv. 15.136–137.
- 102 Quint. *Inst.* 6.1.42.
- 103 Sen. *Controv.* 9.6.12; Quint. *Inst.* 6.1.34.
- 104 Quint. *Inst.* 6.1.46.

4 THE JUDGE

- 1 Much work has been done over the last couple of decades to fill the gaps in our knowledge of the jurisdictions of Rome's judicial officers and the city's legal procedure, using the evidence from city charters found in Spain dating to the first century AD, which are believed to have been modelled on the system used in Rome. See González (1986); Johnston (1987); Birks (1988); Rodger (1990), (1991), (1996), (1996a); Zanon (1992); Crawford (1995); Burton (1996); Metzger (1997), (2005); Wolf (2000).
- 2 For examination of the *recuperatores* see Lemosse (1944) 175–180; Bongert (1952); Kelly (1976) 40–70; Johnston (1987) 67–70; Birks (1988) 43–45, 55–60; Rodger (1991) 87–89; Metzger (1997) 75–76. With the evidence we have, it is clear that a procedure for the selection of *recuperatores* was included in the *Lex Iulia de iudiciis privatis* introduced by Augustus, but on which we are very poorly informed. Whether this procedure deviated in substantial ways from the republican method is unknown. For *recuperatores* in the Republic see Frier (1985) 199–206; Lintott (1990).
- 3 See e.g. Quint. *Inst.* 5.2.1, 12.13.1; Plin. *Ep.* 6.33.3; Kelly (1976) 1–39; Gagliardi (2002) *passim* for their origin and jurisdiction. Ovid's judicial involvement as one of the *tresviri (capitales?)*, one of the *decemviri stlitibus iudicandis*, a judge who heard private cases (I suggest he was a *iudex ex V dec*), and also as one of the *centumviri*, supports the hypothesis that the *centumviri* were drawn from the *album iudicum* in the imperial period.
- 4 See e.g. Garnsey (1970) 17–64; Talbert (1984) 460–487.
- 5 For the *tresviri capitales* see Cascione (1999). For the *decemviri* see Gagliardi (2002).
- 6 See for the urban prefect: Garnsey (1970) 90–98.
- 7 See e.g. Garnsey (1970) 65–90; Millar (1977) 507–549; Wolf (1994).
- 8 The best complete work on the *unus iudex* still is Mazeaud (1933). See also Kelly (1966) 102–117, (1976) 112–133; Garnsey (1970) 207–218.
- 9 Quintilian (*Inst.* 8.3.14) and Juvenal (13.8–9, 15) certainly give a sense of the ubiquity of such cases. See the interesting chapter of Kelly (1976) entitled “The Statistics of Roman Litigation”, 71–92. Also Kelly (1976) 121–133.
- 10 E.g. see Plin. *Ep.* 7.6.8–13; Gell. *NA.* 12.13.1–29.
- 11 Girard (1913) is the best complete study of these laws.
- 12 Augustus lowered the minimum age requirement from 30 to 25; Suet. *Aug.* 32.2. Due to Augustus' establishment of 25 as the minimum age for judges for criminal trials, in his Edict of Cyrene (*FIRA* 1.68, l.16), and mention of the same age minimum for *recuperatores* in an oration commonly attributed to Claudius (*FIRA* 1.44, l. 3), modern scholars conclude that Suetonius' text is corrupted. See Brunt (1961) 78 n. 48; Carter (1982) 139; Demougín (1988) 459–460. The maximum age limit is based on what is found in several laws both republican and imperial in date, which suggest this was the standard age set for exemption from such public duties: e.g. *Lex Repetundarum*, l. 13; *Lex Col. Gen.*, Ch. 98; *Lex Irni*, Ch. 83. Citizenship had to be in one's family for at least one previous generation; new citizens were not permitted: Plin. *NH.* 33.7.30.
- 13 Dio 59.9.5; Demougín (1988) 456. This is discussed further below.
- 14 Suet. *Aug.* 32.3.
- 15 *Lex Acilia de repetundis* (c. 122 BC) l. 13; *Dig.* 1.9.2.
- 16 The latest censor mentioned (Tac. *Ann.* 3.30.2) as having performed this duty was L. Volusius Saturninus, who held the office sometime between 5 and his death in 20 (*PIR V* 660).
- 17 Plin. *NH.* 29.8.18; Suet. *Aug.* 29.3, 32.3, *Tib.* 41, *Calig.* 16.2, *Claud.* 15.1, 16.2; *Galba* 14.3, *Dom.* 8.1. For brief discussion of the censorial powers and the emperor see Millar (1977) 293–295.
- 18 The surviving fragment of the *lex Aurelia* of 70 BC suggests that during the republican period the *praetor urbanus* constructed the decuries from those eligible. We cannot expect

- that the emperor examined those of all three financial categories. The praetor is a natural alternative, though admittedly we have little hard evidence. See Staveley (1953) 210–213.
- 19 *Lex Acilia de Repetundis* (c. 122 BC) l. 11.
 - 20 Suet. *Tib.* 41; Millar (1977) 283.
 - 21 Suet. *Claud.* 15.1; Ulp. *Frag. Vat.* 197–198.
 - 22 Frontin. *Aq.* 101: “*Itemque cum viarum curatores frumentique parte quarta anni publico fungantur ministerio, ut curatores aquarum iudiciis vacent privatis publicisque*”, “In the same way that when the commissioners of the streets and grain distribution perform their public office for one quarter of the year they are exempt from judging private and public cases, so too shall the water commissioners be exempted.”
 - 23 *Dig.* 4.8.3.3 and 4.8.4 state that the praetor can compel all magistrates lower in authority than himself to undertake a case. The passage refers specifically to an *arbiter*. Whether this makes a difference is unknown.
 - 24 Bringmann (1973) 240.
 - 25 There is contention over whether each decury consisted of a mix of senators and equestrians, or that only one decury included the senators and some equestrians and the other two were made up solely of equestrians. For opinions see: Jones (1972) 89; Birks (1988) 53; Demougin (1988) 448.
 - 26 Suet. *Aug.* 32.3. This addition was likely an element of the *leges Iuliae*.
 - 27 Suet. *Calig.* 16.2. Those who support the lower financial qualification for this decury: Pflaum (1969) 153, 187; Demougin (1988) 445. Others avoid the problem, e.g. Birks (1988) 53–54.
 - 28 Plin. *NH.* 33.7.30.
 - 29 Suet. *Tib.* 41.
 - 30 I have compiled a list of 143 such inscriptions, adding only slightly to the previous lists generated by Duncan-Jones (1967); Pflaum (1969); Burnand (1974); Demougin (1975), (1988), (1999). The inscriptions range in date from the early Julio-Claudian period to the mid-third century.
 - 31 Demougin (1975) 177 notes that the use of the particle “*de*” within the various phrases (e.g. “*iudici de IIII decuriis*” or “*iudici de selectis*”) seems restricted to the northern portion of Italy. See *CIL* 3.8261=ILS 2733, *CIL* 5.5128=ILS 6726=AE 1993, 800=AE 2001, 1084, *CIL* 5.7567=ILS 6747=AE 2000, 251. Another example is found in Gaul: *CIL* 12.1358. See Burnand (1974) 62. This variation is of little practical importance.
 - 32 Henderson, M.I. (1963) 66; Demougin (1975) 449.
 - 33 Dio 55.3.1–2.
 - 34 *Tab. Heb.* ll. 8, 11–12. For further discussion of their inclusion in the *Tabula Hebana* see the classic article of Brunt (1961).
 - 35 Plin. *Ep.* 4.29.
 - 36 Demougin (1988) 449.
 - 37 See Jones (1972) 88–90. The senate of the first and second century maintained a relatively steady size of 600 and thus at full strength would have been only one-sixth of the 4,000 in the decuries. Some of those no doubt also could claim exemption from duty. However, Augustus’ assurance that the courts and these senate meetings not overlap suggests that the absence of those on the lists would make a senate meeting impossible. See Dio 54.13.4 and Talbert (1984) 131–134 on the size of the senate. Note also Dio 52.20.5.
 - 38 Plin. *NH.* 33.7.30: “*divo Augusto decurias ordinante*”.
 - 39 Hor. *Sat.* 1.4.121: “*unum ex iudicibus selectis*”.
 - 40 Plin. *NH.* 29.8.18: “*XLV electis viris*”; Sen. *Ira* 2.7.3: “*iudex ... eligitur*”.
 - 41 Ov. *Am.* 1.10.38: “*selecti iudicis arca pater*”, “the purse of the selected judge lies open”; *Tr.* 2.132: “*nec mea selecto iudice iussa fuga est*”, “my flight was not ordered by a selected judge”. No manuscript variations appear.

- 42 CIL 5.5050, ll. 32–33: “*non nulli collecti in decurias Romae res iudicare*”; ILS 206: “[a]llecti”; Smallwood (1967) #368: “<a>llecti”. *Allecti* is the preferred reading.
- 43 Demougin (1975), (1988).
- 44 The variations include “*iudex in V dec*” – “*iudex de V dec*” – “*iudex dec V*”.
- 45 The main efforts before Demougin’s to provide some sort of systemization were made by: Staveley (1953); W. Seston, *Communication à L’Institut de Droit Romain de la Faculté de Droit de Paris du 14 mars 1958* (not published); and Pflaum (1969). Staveley (1953) 208–209 argues that all *selecti* were of equestrian status. As Demougin (1975) 186 points out, inscriptions commemorate *selecti* who clearly were not equestrian.
- 46 E.g. AE 1946, 2; AE 1950, 156; CIL 5.7002; CIL 5.6788. For more extensive lists see Pflaum (1969) 187–188; Demougin (1975) 190–191.
- 47 AE 1897, 100 = RIT 284: “ad]lecto in qui[n]que decuri(as) eq[uitum]/Romanor(um)”; CIL 5.7567 = ILS 6747 = AE 2000, 251; Tac. Ann. 14.20. CIL 5.7567, by referring to the “III decuriis”, can be dated to AD 14–37, suggesting that such generalization came into practice quite early. See Demougin (1988) 462–464 for further discussion.
- 48 CIL 9.4973; AE 1950, 156.
- 49 Early: e.g. AE 1954, 140; CIL 5.7567 = ILS 6747, CIL 6.2169 = ILS 1320. Late: e.g. CIL 5.7375 = ILS 6744, 8.6950, 11.1437 = ILS 2166, CIL 11.1836 = ILS 1332.
- 50 Burnand (1974) 174.
- 51 Pflaum (1969) 184–185.
- 52 CIL 10.1685 = ILS 1397. See Pflaum (1961) 126–128; Demougin (1975) 147–148.
- 53 Duncan-Jones (1967) 152; Jones (1972) 96; Millar (1977) 284. For further discussion of the *quaestiones perpetuae* in the Severan period see Garnsey (1967).
- 54 Plin. NH. 29.8.18; Sen. Ira 3.33.1. See also Hor. Sat. 2.7.53–56; Suet. Claud. 16.2 (judge from Greece).
- 55 For Africa see Pflaum (1969); for Gaul see Burnand (1974); Spain: e.g. CIL 2.2079 = ILS 2713, CIL 2.4211 = RIT 271 = ILS 6936; Sardinia: CIL 10.7518 = ILS 6764; Sicily: Alföldy (2005), CIL 10.7507 = ILS 6772.
- 56 Pannonia: e.g. CIL 3.726 = ILS 1419, CIL 3.6476 = AE 1987, 820; Asia: AE 1924, 82, AE 1972, 573 = AE 1969/70, 595b; Bithynia and Pontus: IGR 3.63 = OGIS 528; Lycia and Pamphylia: IGR 3.778 = OGIS 567.
- 57 Demougin (1988) 458.
- 58 Demougin (1975) 175–177.
- 59 Claudius’ edict concerning citizenship and the Anaunians (AD 46): CIL 5.5050, ll. 32–33. See Sherwin-White (1939) 356–357.
- 60 Pflaum (1969) 195 also suggests that the Africans mention their adlection because it was the first time they were directly honored by the emperor.
- 61 Demougin (1975) 185, 190. Duncan-Jones (1967) 160 says that membership in the decuries “may sometimes have been titular” for those from the provinces. Pflaum (1969) 184, 187 seems to think that those who were adlected did not go to Rome; the title was merely honorific. However, Pflaum (1969) 191 seems subsequently to change his mind.
- 62 Ov. Tr. 2.95–96.
- 63 Ov. Tr. 4.10.33–34, Fast. 4.383–384. Clearly Ovid still planned on a senatorial career when he was *tresvir*. Whether he served as *decemvir* before or after his decision to permanently remain an equestrian is unknown. Pliny used the position of *decemvir* as a step in his political career. However, it is also true that Ovid, when he became *decemvir*, had held two offices in the *Vigintivirate*, instead of just one as was more common. Perhaps this is an indication of his alteration in career path. See Kenney (1969) 245–248 for discussion.
- 64 Ov. Tr. 2.93–94.
- 65 Gell. NA. 14.2.1. We will return later to discuss this interesting passage.

- 66 Holford-Strevens (2003) 12. Burrus, the advisor to Nero, may also have been a member of the decuries. In 56 Burrus and Pallas, Agrippina's former advisor, were charged with treason. Tacitus reports that Burrus "*quamvis reus inter iudices sententiam dixit*", "although a defendant gave his opinion among the judges". The court of this trial is not identified. Burrus' involvement as a judge, however, suggests that it was the standing *quaestio* court and he participated as one of the equestrian judges. His voting among the judges while a defendant surely must have been illegal.
- 67 For discussion of the republican *quaestiones* see Jones (1972) 45–70. The *lex Pompeia de vi* called for the praetor of that court to select a special *album* of 360 judges, perhaps from the *selecti* (though the law does not specify), who then heard the evidence for three days. On the fifth day 81 names were drawn from that group, and these individuals then heard the speeches of the advocates. Then each litigant rejected five jurors from each decury and the remaining 51 voted. See Cic. *Att.* 8.16.2; Vell. *Pat.* 2.76; Plut. *Pomp.* 55.4; Dio 40.52.1; Jones (1972) 69.
- 68 On Augustus' edict on the aqueduct at Venafrum (c. 18–11 BC) ll. 64–69, see *FIRA* 2.403; *Lex Irni.*, Ch. 89, see González (1986).
- 69 Cic. *Clu.* 43.120.
- 70 This follows the procedure set out in the *lex Irnitana*. See Birks (1988) 41–45.
- 71 Suet. *Aug.* 29.1: "*ut separatim in eo publica iudicia et sortitiones iudicum fierent*", "so that public trials [i.e. trials of the *quaestiones perpetuae*] and the sortition of judges might be held there separately"; Dio 52.7.5, 54.18.2.
- 72 Birks (1988) provides a helpful, detailed examination of these issues.
- 73 Plin. *NH.* 29.8.18.
- 74 Jones (1972) 69–70. Strachan-Davidson (1912) 96–103 offers an excellent discussion of the seven methods used over the course of the Republic for empanelling a panel of judges. See also Ascon. *Milo* 39.21.
- 75 Girard (1913) 361, 363.
- 76 Gell. *NA.* 14.2.1.
- 77 Bringmann (1973) 235.
- 78 Ov. *Tr.* 2.89–96. This is discussed further below.
- 79 *Dig.* 5.1.12.2.
- 80 *Dig.* 4.8.41.
- 81 Quint. *Inst.* 11.1.43, 45; G. 4.105, 109; *Dig.* 4.8.7, 5.1.12.
- 82 *Dig.* 4.8.5.
- 83 Mazeaud (1933) 96–99.
- 84 *Frag. Vat.* 197–198.
- 85 *Dig.* 50.5.13.pr. It is possible that long-term ill health and holding a priesthood were valid excuses for exemption from the decuries as well, though no evidence states this.
- 86 Plin. *Ep.* 1.10.9 (likely while *praefectus*), 1.20.12, 6.2.7–8. (likely while *curator* – his use of the term *iudex* must then be taken as a generalized term rather than as applying solely to his activities as a magistrate); see Sherwin-White (1966) 109–110. On one occasion Pliny acted as assessor to the *praefectus urbi* in a case in which Ummidius Quadratus and Fuscus Salinator were the advocates (*Ep.* 6.11). Surprisingly, Pliny does not identify the *praefectus urbi*.
- 87 Dio 69.18.3; SHA. *Hadr.* 6.7, 9.4. Turbo became *praefectus praetorio* in 119. How long he held the post is uncertain. For discussion see Syme (1980) 67–74.
- 88 Augustus: Suet. *Aug.* 33.1, 51.2; Tiberius: Suet. *Tib.* 31; Dio 57.7.2, 6; Caligula: Suet. *Calig.* 38.3; Claudius: Jos. *AJ.* 20.134; Suet. *Claud.* 14, 15, 23.1, 33.1–2, 42, 46; Nero: Suet. *Ner.* 15; Vespasian: Suet. *Vesp.* 13; Dio 66.10.5; Domitian: Suet. *Dom.* 8; Dio 67.17.1; Trajan: Dio 68.10.2; Hadrian: Dio 69.3.6, 69.7.1; Marcus Aurelius: Dio 71.6.1; Septimius Severus: Dio 74.9.1, 75.15.5, 76.17.1. For detailed discussion of the emperor's jurisdiction see Millar (1977) 507–549. Wolf (1994) has made a more recent contribution on Claudius

- as a judge. Another imperial figure is found within the Roman courtroom. Quintilian (*Inst.* 4.1.19) remarks that he spoke on behalf of Queen Berenice in a case which apparently she also heard as judge. Crook (1951) 169–170 does not believe she was judging the case but perhaps was attempting to utilize her influence merely by being present. This explanation is insufficient since Quintilian clearly includes this story under the rubric of occasions when judges were hearing cases in which their own interests were involved. Crook says that it was “hardly possible to suppose that a foreign princess” could be a civil *iudex*. However, one must remember that a *unus iudex* could be anyone the litigants agreed upon who met the criteria. The only criterion that Berenice did not meet was that she was a woman. The case must date to sometime between 75 and 79 when Berenice was in Rome (Dio 66.15.3, 66.18.1), though perhaps her time in the city was broken up into two visits.
- 89 Collinet (1934) 25–27 provides a list of those who acted as a *unus iudex*, in his opinion, during the republican and imperial period. Several passages (Hor. *Sat.* 2.1.47–50; Plin. *Ep.* 7.22.2; Front. *Ad Am.* 1.1.2) make mention of the participation of some as apparently single judges. However, the vagueness of the remarks permits of no sound conclusions.
- 90 Plin. *Ep.* 1.20.12, 6.2.7, 7.30.2. It may be argued that Pliny is referring to legal duties while serving as *curator alvei Tiberis* in *Ep.* 6.2.7.
- 91 Plin. *Ep.* 5.1.1–6.
- 92 Plin. *Ep.* 1.20.12, 6.2.8, 7.30.2. In the last passage Pliny states that he acted as “*iudicem aut arbitrum*”, “judge or arbiter”. Again, the appearance of both terms causes concern as to their similarity or uniqueness.
- 93 The jurisdictional and chronological issues associated with delegated authority are many and diverse. Regarding the abilities of the emperor to delegate, for example, see Millar (1977) 507–527.
- 94 Sen. *Ep.* 114.6.
- 95 Dio 59.8.4. See Millar (1977) 510.
- 96 Plin. *Ep.* 7.6.8–13.
- 97 See *PIR*² I 631.
- 98 The involvement of Suburanus is complicated by Pliny’s implication that Suburanus had been involved with this case before this occasion. Suburanus was consul in 101 and 104, and *praefectus praetorio* previously (*PIR*² A 1366). His involvement may have been during one of these offices, which would then explain his participation in terms other than as a delegate of the emperor.
- 99 Gell. *NA.* 12.13.1.
- 100 Hor. *Ep.* 1.16.42.
- 101 Juv. 8.79–80; Quint. *Inst.* 1.pr.10.
- 102 There are several problems, highly technical in nature, surrounding our understanding of the “*iudex qui litem suam facit*”, “the judge who makes the case his own”. For discussion and attempted explanations see, e.g. Kelly (1966) 102–117, Robinson (1999).
- 103 E.g. Ov. *Tr.* 4.10.15.
- 104 Quint. *Inst.* 2.17.29, 4.5.3, 5.14.29, 8.2.13, 10.1.32, 11.1.45, 12.10.53.
- 105 Quint. *Inst.* 4.2.45. In 11.1.45 and 12.10.53 Quintilian also refers to the rustic origins of judges. He may, in these passages, be referring to other types of judges, since he does not specify those in the decuries.
- 106 Note that when the category of *ducenarii* was first added, only those who met that financial limit and were in Italy were eligible. When provincials were admitted to the decuries, those from the provinces who met the financial limit of the *ducenarii* could participate.
- 107 Quint. *Inst.* 12.10.53.
- 108 Quint. *Inst.* 4.2.45–46, 11.1.45.
- 109 Quint. *Inst.* 8.2.13.
- 110 Suet. *Claud.* 16.2.
- 111 Quint. *Inst.* 5.14.29.

- 112 Sen. *Ben.* 3.7.7.
- 113 Juv. 7.116–117. The phraseology of the sentence suggests we must interpret this phrase in the plural and take it to refer to a panel of judges. See Ferguson (1979) 224; Courtney (1980) 364–365.
- 114 Plin. *Ep.* 7.30.2–3.
- 115 Plin. *Ep.* 1.20.12.
- 116 Quint. *Inst.* 4.2.45.
- 117 Sen. *Ben.* 3.7.7.
- 118 E.g. Plin. *Ep.* 7.6.8, Gell. *NA.* 12.13, Dio 59.8.4–5.
- 119 Suet. *Tib.* 41; Dio 59.9.5.
- 120 Suet. *Claud.* 16.2.
- 121 For extended discussion see Behrends (1969).
- 122 There is some controversy surrounding the utilization of a *consilium* by the praetors: Tellegen-Couperus (2001); Ducos (2003). For the emperor's court see e.g. Tac. *Ann.* 11.1; Plin. *Ep.* 4.22.1, 6.22.1, 6.31.1; court of the *praefectus urbi*: Plin. *Ep.* 6.11.1, Gell. *NA.* 11.7.3(?); court of the praetor: Gell. *NA.* 1.22.6(?); court of an unidentified magistrate: Dio 57.7.6; *consilium domesticum* (household court of private citizen): Sen. *Clem.* 1.15; Plin. *Ep.* 5.1.4.
- 123 E.g. emperors: Augustus (Sen. *Clem.* 1.15); Tiberius (Suet. *Tib.* 33; Dio 57.7.6); Claudius (Suet. *Claud.* 12.2). Consulars: Lucius Vitellius *cos.* 34 (Tac. *Ann.* 11.1; *PIR* V 500); Corellius Rufus *cos.* 78 (Plin. *Ep.* 5.1.4; *PIR*² C 1294); Sextus Iulius Frontinus *cos.* II 98 (Plin. *Ep.* 5.1.4; *PIR*² I 322). Jurisprudents: Javolenus Priscus *suff.* 86 (Plin. *Ep.* 6.15.3; *PIR*² I 14); Titius Aristo (Plin. *Ep.* 1.22.6). Advocates: Plin. *Ep.* 1.9.2, 1.20.12, 4.22.1, 6.11.1, 6.22.1, 6.31.1; Gell. *NA.* 14.2.9.
- 124 E.g. Plin. *Ep.* 1.9.2.
- 125 Plin. *Ep.* 1.12, Gell. *NA.* 14.2.9.
- 126 See Sherwin-White (1966) 111–112, 272–273.
- 127 Gell. *NA.* 12.13.3.
- 128 Gell. *NA.* 14.2.1; Holford-Strevens (2003) 295.
- 129 Holford-Strevens (2003) 297. Favorinus mentions the work of another jurist, which Gellius apparently had not read (Gell. *NA.* 14.2.20). See Frier (1985) 217–218.
- 130 Plin. *Ep.* 6.33.9.
- 131 Gell. *NA.* 14.2.25.
- 132 Quint. *Inst.* 6.1.32, 6.1.40, 6.3.72.
- 133 Quint. *Inst.* 4.1.20.
- 134 Fronto *Ad Am.* 1.1.2–4.
- 135 Quint. *Inst.* 11.1.75.
- 136 Quint. *Inst.* 4.1.19.
- 137 Quint. *Inst.* 11.1.76; Dio 59.8.4. Also rehearing a case, though not on appeal: Quint. *Inst.* 11.1.77.
- 138 Quint. *Inst.* 11.1.75.
- 139 Tac. *Dial.* 5.1.
- 140 Quint. *Inst.* 4.1.18.
- 141 Garnsey (1970) deals with this topic in far more detail. In his effort to reach some conclusions Garnsey on occasion places his arguments on foundations that simply cannot supply adequate support, thereby revealing how little trustworthy evidence exists.
- 142 Gell. *NA.* 14.2.4–25. On this letter see Nörr (1996) 33–56.
- 143 Gell. *NA.* 14.2.5–6.
- 144 Gell. *NA.* 14.2.23.
- 145 Gell. *NA.* 14.2.25.

- 146 Garnsey (1970) 194. There were multiple praetors, however, and in some situations it was possible for a prospective litigant to approach a different one. This option might have addressed egregious prejudices of praetors, but it required that at least one praetor take a different stance. If the case brought together litigants of very unequal standing, the litigant of lower status would likely have encountered the same difficulty before any praetor.
- 147 Quint. *Inst.* 4.1.18.
- 148 Quint. *Inst.* 1.pr.10.
- 149 It must be remembered that during the hearing of a case *per se*, the attention of the audience would be focused for the most part on the advocates until a decision was to be rendered.
- 150 Plin. *Ep.* 10.2.1. Since this right was held by men like Pliny who, while close to the centre of power, was hardly a heavyweight, we must assume that many other far better connected men also had been granted the right by various emperors over the years. In addition, there must have been at least some men who actually did produce three children. One cannot help but wonder, after estimating the number in these two groups – those with the grant but without the requisite children and those with the children – how many senators were left who were eligible to serve on the decuries once all the other valid excuses were also considered as well. The total number must indeed have been well below 600.
- 151 Ovid is but one example (*Tr.* 4.10).
- 152 They may have sought the position to benefit from bribes, a possibility which I consider below.
- 153 Suet. *Tib.* 51.
- 154 Suet. *Claud.* 16.2.
- 155 It is also possible that he felt trapped. If he was illustrious and a leading citizen, no doubt all around him assumed he had learned Latin as part of his education. To admit his ignorance would have meant a great loss of face.
- 156 Suet. *Claud.* 15.1.
- 157 Ov. *Tr.* 2.89–96.
- 158 Hor. *Sat.* 1.4.120–123.
- 159 To complicate matters, the manuscripts do not consistently use *selectis* in this passage; *electis* is also found (manuscripts *M* and *II*).
- 160 Pflaum (1969) 187–189; Demougin (1975) 195–197.
- 161 Pflaum (1969) 189–190; Demougin (1975) 192. The evidence showing these developments cannot be covered in detail here. For further discussion see Pflaum (1969); Demougin (1975).
- 162 Demougin (1975) 191, 201.
- 163 Burnand (1974) 72.
- 164 Gell. *NA.* 12.13.1.
- 165 Gell. *NA.* 14.2.1, 25.
- 166 Quint. *Inst.* 5.13.6.
- 167 We do hear of unusually busy periods for the courts: e.g. Tac. *Hist.* 1.20; Suet. *Vesp.* 10; Dio 76.16.4.
- 168 Suet. *Aug.* 32.3.
- 169 Plin. *NH.* 33.7.33; Suet. *Cal.* 16.2.
- 170 Tac. *Hist.* 1.20; Suet. *Galba* 14.3.
- 171 For discussion see Kelly (1966) 89–97; Garnsey (1970) 16–100; Jones (1972) 91–118; Millar (1977) 507–537; Talbert (1984) 460–487.
- 172 For a list of sample cases see Jones (1972) 94 n. 23, 24. The last *maiestas* trial reported as held in a *quaestio* was that of Marcus Priscus in 22 BC: Dio. 54.3.1–4; Rutledge (2001) 21–22. The *quaestio de sicariis et veneficiis* was clearly functioning in 19. Piso assumed that his case would be heard there, but the case ended up in the senate due to Germanicus’

- family connections (Tac. *Ann.* 2.79.1–2, 3.10–12. For earlier references to this court in the imperial period see Sen. *Controv.* 9.6.12; Dio 56.24.7. The court is mentioned again in Seneca's *Apocolocyntosis* (14.1), suggesting its existence still in 54, though some caution is warranted. The *quaestio de falsis* also appears to have continued functioning as late as 61 (Tac. *Ann.* 14.40.1–41.3; Suet. *Aug.* 33.2). For discussion of the survival of the *quaestio de adulteriis*, which was established only during Augustus' reign, see Garnsey (1967).
- 173 Dig. 48.1.8.
- 174 Suet. *Aug.* 32.3.
- 175 For discussion see Kelly (1966) 33–42.
- 176 This was one reason for restricting membership in the decuries to only the wealthiest classes (poorer members of Roman society could not afford to sit in a courtroom day in and day out without receiving pay) though social and political forces must not be excluded.
- 177 Single judge: Mart. 2.13; decuries: Tac. *Ann.* 1.75.1, 2.34.1; Juv. 13.1–4; Suet. *Tib.* 33.1; *centumviri*: Suet. *Dom.* 8. Scholars are divided in their interpretation of the Juvenal passage. Ferguson (1979) believes the bribery took place in determining the order in which cases were heard. Courtney (1980) rather believes the bribery took place in the selection of the judges for the case. I see no reason to stray so far from the most simple method; the *fallax urna* surely means that the some of the votes of the judges going into the urn were bought.
- 178 Quint. *Inst.* 4.1.21.
- 179 Hor. *Carm.* 4.9.41–44.
- 180 Ov. *Am.* 1.10.38.
- 181 Tac. *Ann.* 1.75; Suet. *Tib.* 33. Also, in 21 Tiberius (Tac. *Ann.* 3.38.2) rebuked the judges of the *quaestio*, which heard cases concerning adultery, for acquitting one Antistius Vetus. While Tacitus makes no mention of bribery and in this section is portraying Tiberius as unfairly prosecuting individuals, Tacitus does state that Antistius was “*e primoribus Macedoniae*”, “from the leading [men] of Macedonia”, which perhaps hints at some sort of influence playing a role in his acquittal.
- 182 Suet. *Dom.* 8.1. Rolfe's 1914 Loeb translation of this passage is misleading with regards to the technical terminology.
- 183 Quint. *Inst.* 8.2.13, 11.1.45.
- 184 Quint. *Inst.* 8.2.22.
- 185 Quint. *Inst.* 4.1.33, 4.1.48, 4.1.73–74.
- 186 Suet. *Claud.* 33.2.
- 187 Quint. *Inst.* 6.1.7.
- 188 Quint. *Inst.* 6.1.10.
- 189 Quint. *Inst.* 6.4.19, 12.10.56.
- 190 Quint. *Inst.* 4.2.77, 6.2.7, 12.10.62.
- 191 Plin. *Ep.* 9.23.1.
- 192 Gell. *NA.* 15.5.4.
- 193 Outside of Rome, we do find some records of rulings delivered by the judge, e.g. *CIL* 9.2827=ILS 5982: Helvidius Priscus (likely the executed father of Helvidius Priscus, the friend of Tacitus and Pliny – see *PIR*² H 59) served as an arbiter in a boundary dispute between Q. Tillius Eryllus and M. Paquius Aulanius. Only the opening survives, in which mention is made of a previous document dating to 19.
- 194 Gell. *NA.* 14.2.16–19.
- 195 Philostr. *VS.* 2.30.622–623.
- 196 Sen. *Controv.* 9.6.12; Suet. *Claud.* 15.3.
- 197 Schäfer (1989) 151–152, 255–256, no. 10, Taf. 33, 2; Coarelli (2000) pl. 86 (LIV/LXXV).

5 THE AUDIENCE

- 1 Father: Fronto *Ad Am.* 1.27.1; wife and child: Mart. 6.38. It is notable that Pliny's wife (*Ep.* 4.19.3) – who is in Rome and obviously interested – does not attend but rather sends a person to report about the reception of his speech and the verdict; meantime, Regulus' wife does attend. Does Calpurnia's delicateness, mentioned elsewhere in the letters, suggest the courts were too rowdy for her?
- 2 E.g. Quint. 11.3.131, 12.8.2. It is difficult to distinguish between clients and members of the paid audience.
- 3 Plin. *Ep.* 6.6.6. The only other known reference to Julius Naso is as the recipient of letter 4.6 (Sherwin-White [1966] 362).
- 4 Quint. *Inst.* 11.3.131.
- 5 Quint. *Inst.* 10.5.19. See also 10.1.122. The ancient informal associations *tirocinium fori* and *contubernium*, which were founded on relationships between established men and upcoming youths and served to develop contacts, no doubt found their way into the court environment as well. For discussion of Quintilian's upbringing see McDermott and Orentzel (1979) 9–12, and for Fronto's involvement in such groups, Champlin (1980) 78.
- 6 Plin. *Ep.* 6.6.6.
- 7 Pliny's silence in this regard is puzzling and must be attributed to a chance absence in the historical record, since he studied under Quintilian: Plin. *Ep.* 2.14.9, 6.6.3.
- 8 Tac. *Dial.* 2.1.
- 9 Tac. *Dial.* 1.2–3.
- 10 Plin. *Ep.* 2.14.10–11. Note that use of the verb *adsectari* indicates a youth accompanying an orator, not a junior advocate.
- 11 Quint. *Inst.* 8.5.21.
- 12 Plin. *Ep.* 4.16.2.
- 13 Fronto *Ad Am.* 1.27.1.
- 14 E.g. Quint. *Inst.* 1.5.43, 4.2.28, 5.13.49, 6.4.6; Plin. *Ep.* 5.9.2, 6.33.2; Gell. *NA.* 14.2.7.
- 15 Quint. *Inst.* 6.4.6. The most basic outline of courtroom procedure, which could be varied for a myriad of reasons, consisted of the delivery of speeches by both sides (prosecution/plaintiff first), examination of documents and witnesses, cross examination, and the *altercatio*, debate. Quintilian here speaks of the *altercatio*. See Kennedy (1972) 14–15 for very general discussion.
- 16 Quint. *Inst.* 12.3.2.
- 17 Quint. *Inst.* 11.3.131.
- 18 He mentions *monitores* twice: Quint. *Inst.* 6.4.9; 12.3.3–4.
- 19 Quint. *Inst.* 6.4.9.
- 20 Quint. *Inst.* 6.4.8: In the *altercatio* the advocate must be quick-witted and thoroughly understand the facts of the case, “*alioqui et tacendum erit saepe et aliis subiicientibus (plerumque autem studio loquendi fatue modo) accedendum*”, “otherwise often he will have to fall silent and accept the suggested ideas of his subordinates (most of which are idiotic because of overzealousness)”.
- 21 Plin. *Ep.* 2.14.6.
- 22 Quint. *Inst.* 1.5.43, 6.4.7, 11.3.156. In the emperor's employment a *praeco* relayed the emperor's messages among large crowds as well as attempting to quieten audiences on occasion (Suet. *Aug.* 84, *Dom.* 13.2; Dio 69.6.1–2). Aldrete (1999) 78–79, 122–123 discusses the *praeco* primarily in the context of the emperor's entourage. At Carthage (and so, beyond the scope of this study) Apuleius (*Flor.* 9.10–12) mentions the efforts of the *praecox* of the proconsul (apparently from atop the proconsul's tribunal) to quieten the audience by bellowing.
- 23 Quint. *Inst.* 1.5.43.

- 24 Wives: Quint. *Inst.* 4.1.28, 6.1.33; children: Quint. *Inst.* 4.1.28, 6.1.33, 11.3.174; mother: Quint. *Inst.* 8.5.21; Juv. 7.145; parents: Quint. *Inst.* 6. 1.30, 33; kinsfolk: Quint. *Inst.* 6.1.33, 11.3.174.
- 25 Quint. *Inst.* 4.1.28, 6.1.30, 33.
- 26 Quint. *Inst.* 4.1.30. A very fragmentary relief depicts just such a courtroom scene (see Schäfer [1989] 255–256, Taf. 33, no. 10). At the far right edge of the scene a man, the defendant, kneels with his arms extended forward. On the missing right portion of the scene it is likely (based on other similar surviving scenes) that a figure seated on a platform, the judge, faced the defendant. Behind the defendant stand six figures. At the far left stands a man in a toga, the advocate, extending his right arm with a pointed finger towards the defendant. Between the advocate and his client stand three women and two children, all of whom face the judge. The clothing and hairstyles of two of the women suggest they vary in age, and portray a wife and perhaps a teenage daughter. Too little detail survives of the third woman to allow any suggestions regarding age or relation to the defendant.
- 27 Quint. *Inst.* 6.1.47.
- 28 Quint. *Inst.* 6.1.41.
- 29 Juv. 7.145–147.
- 30 Denny (1994) 290.
- 31 Quint. *Inst.* 5.10.26.
- 32 Quint. *Inst.* 5.7.32.
- 33 Plin. *Ep.* 6.33.3.
- 34 Dio 54.30.4.
- 35 Suet. *Aug.* 56.3.
- 36 Mart. 8.76.
- 37 Fronto *Ad M. Caes.* 5.59.1.
- 38 The person who could grant the most prestige to a litigant's cause was the emperor. We know from Suetonius and Cassius Dio that Augustus appeared on occasion to support friends who were being tried. The most famous case is the trial of Nonius Asprenas on charges of poisoning (Suet. *Aug.* 56.3; Dio 55.4.3, 57.11.7). Iulius Bassus (Plin, *Ep.* 4.9.7), going up on *repetundae* charges, may have been hoping for such visible support when he made a point of explaining to Trajan his strict criteria for accepting gifts from provincials. Pliny does not mention Trajan's attendance.
- 39 Juv. 7.106–110. For elucidation of this passage see Courtney (1980) 363.
- 40 Quint. *Inst.* 12.5.6.
- 41 Plin. *Ep.* 1.16.1.
- 42 Plin. *Ep.* 6.2.3.
- 43 Plin. *Ep.* 2.14.9–11.
- 44 Plin. *Ep.* 2.14.4–8.
- 45 Berger (1953) 573. E.g. Cic. *Rosc. Am.*; Nep. *Att.* 6.3.2; Plin. *NH.* 10.60.122, 33.57.164; *Dig.* 19.2.53.pr.2.
- 46 Tac. *Ann.* 1.16.4. For a discussion of non-courtroom claques and their workings see Aldrete (1999) especially Chapters 4 and 5 and Cameron (1976) 235–249.
- 47 Mart. 2.27.
- 48 Quint. *Inst.* 11.3.131.
- 49 Mart. 2.74 suggests the same. However, it is difficult to tell how exact a parallel Martial is attempting to draw between Saufeius and Regulus. If it is only a comparison of crowd size then Saufeius may not be an advocate.
- 50 The “decline of oratory” is discussed further in Chapter 6.
- 51 Quint. *Inst.* 4.2.127.
- 52 Aldrete (1999) 137.
- 53 Plin. *Ep.* 2.14.4–8.

- 54 Quint. *Inst.* 11.3.131.
- 55 Plin. *Ep.* 2.14.4.
- 56 This does not account for how pay was distributed when one case finished earlier in the day. Most likely participants were paid in the courtroom area itself. We cannot make too much of Pliny's statement since it could also be translated to mean "right there in the basilica". However, it is arguable that the more literal translation is indicative of a spatial context.
- 57 Plin. *Ep.* 2.14.6.
- 58 Bassus (Mart. 9.100) offers that same amount to Martial as *sportula*, saying that Martial must give him audience in the morning and accompany him to visit approximately ten widows. Martial turns him down, saying that the amount is insufficient for that kind of a day.
- 59 Four asses equal one sesterce; four sesterces equal one denarius.
- 60 Cloud (1989) 210 implies he takes the number this way; Courtney (1980) 105 agrees. We have little other evidence with which to compare Juvenal's information.
- 61 Soldier's pay: Duncan-Jones (1982) 10–12; quarry-worker's pay: Cuvigny (1996) 141.
- 62 *Matt.* 20.1–2.
- 63 This exorbitant pay may be evidence that the claquees were *not* paid a daily wage, but rather were paid per case, which could extend beyond one day. Or, on the other hand, we might find here an instance where some were paid per day and others for a complete case. Pliny's attendants had to be present since their attendance was attached to that of Pliny. Perhaps they were paid for the entire case, even though this was not the norm for a claque.
- 64 Plin. *Ep.* 2.14.4.
- 65 Plin. *Ep.* 6.33.4.
- 66 Plin. *Ep.* 4.16.1.
- 67 Tac. *Dial.* 32.2.
- 68 Tac. *Dial.* 7.4.
- 69 Plin. *Ep.* 7.17.9.
- 70 Quint. *Inst.* 4.2.37; Tac. *Dial.* 6.4.
- 71 Sen. *Controv.* 9.pr.5. Also see Mart. 6.38.
- 72 Mart. 2.27.
- 73 Mart. 3.46.
- 74 Sen. *Controv.* 9.pr.5; Quint. *Inst.* 10.3.30.
- 75 Suet. *Claud.* 15.2.
- 76 Dio 60.33.6.
- 77 Mart. 1.95.
- 78 Mart. 3.46.
- 79 Sen. *Controv.* 9.pr.3.
- 80 Quint. *Inst.* 6.1.40.
- 81 Quint. *Inst.* 5.10.67.
- 82 Sen. *Controv.* 9.pr.3. We can assume that some of the laughter and contradictions came from opposing counsel, to which a disclaimer would also not be accustomed.
- 83 Plin. *Ep.* 2.14.13.
- 84 Sen. *Controv.* 9.pr.2; Quint. *Inst.* 4.2.127, 6.4.6, 10.2.27, 11.3.131; Mart. 6.38; Plin. *Ep.* 2.14.8, 4.19.3, 9.23.1.
- 85 Quint. *Inst.* 4.2.37, 12.8.3; Mart. 1.95.
- 86 The etymology of *clamor* is especially suggestive of a verbal act. Martial speaks of shouts of "*sophos*" (bravo) coming from the audience: 1.49, 6.48.
- 87 Plin. *Ep.* 2.14.13.
- 88 Cic. *Sest.* 54.115, 117; Hor. *Ars.* 155; Mart. 9.33.1 (baths); Tac. *Hist.* 2.55; Plin. *Ep.* 7.24.7; Suet. *Aug.* 56.2.
- 89 Cic. *Sest.* 54.117.

- 90 Tac. *Ann.* 14.15.8; Suet. *Ner.* 20.3; Dio 61.20.3–5.
- 91 Suet. *Ner.* 20.3.
- 92 Juv. 7.43–44.
- 93 Juv. 13.32–33.
- 94 Quint. *Inst.* 10.1.17, 4.2.37.
- 95 Plin. *Ep.* 2.14.6.
- 96 Quint. *Inst.* 10.2.27.
- 97 Mart. 2.27.1.
- 98 Plin. *Ep.* 2.14.5.
- 99 Tac. *Dial.* 39.3–4.
- 100 Aldrete (1999) 117.
- 101 Smitherman (1977) 104.
- 102 Aldrete, while noting this modern parallel, does not appear aware of the terminological problems subsumed under the modern term “applause”. Sherwin-White (1966) 183 concurs that courtroom audiences shouted rather than clapped.
- 103 E.g. Saller (1982); Wallace-Hadrill (1989); Konstan (1997).
- 104 Dion. Hal. 2.10.1–2; Tac. *Dial.* 39.4.
- 105 E.g. Sen. *Controv.* 10.1.7; Mart. 2.24.1–2.
- 106 Juv. 1.127–134. Martial (8.44.6–8) also mentions a client who spends most of the business day in the imperial *fora*.
- 107 Quint. *Inst.* 11.3.131; Juv. 1.133; Plin. *Ep.* 2.14.4.
- 108 Juv. 1.95–116. Martial also makes frequent mention of the *sportula*: e.g. 1.59, 1.80, 3.7, 3.60, 8.42, 9.85, 10.26, 10.70.13, 14.125.
- 109 Plin. *Ep.* 2.14.5.
- 110 Mart. 2.27.
- 111 Juv. 1.132–134.
- 112 Mart. 3.46.
- 113 I am taking this relationship to be one of patron and client. The word *amicus* is very difficult to define and seems to cross our constructed modern boundaries between friendship and patronage. See Konstan (1997) 122–148 as an introduction to the problem.
- 114 Quint. *Inst.* 11.3.131.
- 115 Plin. *Ep.* 2.14.4–9.
- 116 E.g. Mart. 2.27, 3.46; Juv. 1.127–134.
- 117 For discussion of *clagues* in the theater and courtroom see Cameron (1976) 235–249 and Aldrete (1999) 135–137.
- 118 There is no doubt that the institution of patronage of the late first century AD was far different from that of the first century BC and that the focus upon the emperor as supreme patron played a substantial role in the redefinition of the patronage system. The existence of these two types of audience members (i.e. clients doing their duty, and others who were paid) is perhaps evidence of this gradual evolution. Clients of patrons could still be found in the courtroom hoping to gain meals, but advocates and litigants, in an effort both to guarantee their own success and to recreate the audiences of yesteryear, hired “extras” to supplement their numbers.
- 119 Quint. *Inst.* 10.1.17–18.

6 THE ADVOCATE

- 1 De Ste. Croix (1954). Important work on the legal services of patrons in the Republic has been done by David (1992). Crook (1995) 122–123, 126 provides evidence of advocates of less exalted families in Cicero’s writings as well: e.g. L. Caesulenus (*Brut.* 131, 242, 259) and the brothers Caepasius (*Pro Clu.* 57–59).

- 2 E.g. emperors: Augustus (Suet. *Aug.* 56.4); members of the imperial family: Tiberius (Suet. *Tib.* 8.1), Germanicus (Suet. *Gaius.* 3.1–2); Nero (Suet. *Ner.* 7.2); Titus (Suet. *Tit.* 4.2); old families: Sulpicius Galba (Suet. *Galba.* 3.3); Valerius Messalla Corvinus (Tac. *Dial.* 17.6, 18.2; *PIR* V 90); Asinius Pollio (Sen. *Controv.* 2.5.13; *PIR*² A 1241); Ummidius Quadratus (Plin. *Ep.* 6.11.1; *PIR* U 603); Fuscus Salinator (Plin. *Ep.* 6.11.1; *PIR*² P 200).
- 3 Agrippa (Sen. *Controv.* 2.4.13; *PIR* V 457); Eprius Marcellus (Tac. *Dial.* 8.1–3; *PIR*² E 84); Pliny (Plin. *Ep.* 2.11, 2.14; *PIR*² P 490); Tacitus (Plin. *Ep.* 2.11.2, 7.20.4; *PIR*² C 1467); Regulus (Plin. *Ep.* 1.5, 6.21; Mart. 2.74; *PIR*² A 1005); Vibius Crispus (Tac. *Dial.* 8.1–3; *PIR* V 379). Tacitus would label three of these men, Eprius Marcellus, Regulus, and Vibius Crispus, as *delatores* – men who informed against those of wealth before the senate or the emperor with an expectation that financial gains would come to them from the estate of the accused. The subject of *delatores* is very difficult and one that cannot be treated without focused examination of the senatorial court. As this court falls outside this study's scope, I have left this issue aside. I am very uneasy with the whole concept of *delatores*, for several reasons: 1) the term is used rarely outside the writings of Tacitus; 2) the activities of those whom Tacitus deems *delatores* are predominantly known from his writings alone; 3) when other sources do provide information, they often show the “*delator*” *defending* someone in court, or present them in a far more favorable light than does Tacitus; and 4) even developing a working definition of the term *delator* is extremely difficult. Tacitus is not clear as to the criteria for being labelled a *delator*. For recent detailed examination see O'Neal (1978); Rutledge (1999, 2001); Rivière (2002).
- 4 Erucius Clarus (Plin. *Ep.* 2.9.4); Pompeius Saturninus (Plin. *Ep.* 1.16.2); Seneca the Elder (Sen. *Controv.* 3.pr.12, 17); Suetonius (Plin. *Ep.* 1.18). Perhaps Ovid as well (*Rem. Am.* 661).
- 5 Juv. 7.148–149.
- 6 Septimius Severus (Stat. *Silv.* 4.5.49); Fronto (*PIR*² C 1364); Servilius Silanus (Fronto *Ad. Am.* 2.11.1) Postumius Festus (Fronto *Ad. Am.* 2.11.1); Aufidius Victorinus (*PIR*² A 1393).
- 7 Domitius Afer (*PIR*² D 126); Iulius Africanus (*PIR*² I 121).
- 8 Herennius Senecio (*PIR*² H 128); Licinius Sura (*PIR*² L 253); Martial (*PIR* V 77); Ursus Servianus (*PIR*² I 631).
- 9 Crook (1995) 39.
- 10 Mart. 3.38.5–6; Juv. 7.129–130; Mart 1.79; Mart. 8.16.
- 11 David (1992) viii–ix; Crook (1995) 148–149.
- 12 Berger (1953) 549. See David (1992) 121–137 for discussion.
- 13 Cic. *Pro Mur.* 8. See also Cic. *De off.* 69.
- 14 Dio 54.18.2; Rich (1990) 195. For an examination of the pay of advocates and the social implications see Pani (1986), with whom I in general agree.
- 15 Tac. *Ann.* 11.5–7; Plin. *Ep.* 5.9.4; Pani (1986) 318–324.
- 16 Mart. 2.30.
- 17 Mart. 5.16.5–8.
- 18 Quint. *Inst.* 12.7.11; Pani (1986) 329–331.
- 19 Plin. *Ep.* 5.9.6; Pani (1986) 322–323.
- 20 Juvenal suggests much the same: 7.134; Griffith (1969) 381–382.
- 21 Quint. *Inst.* 12.7.12.
- 22 Mart. 10.87.8–18.
- 23 Mart. 4.46.6–17. Also see 12.72.
- 24 Fantham (1997) 121.
- 25 *Ep.* 1.18.3. Also, for example, Asinius Pollio attacked Cato early in his career: Sen. *Controv.* 7.4.6; Tac. *Dial.* 34.5.

- 26 Crook (1995) 39, 130. This builds on ideas first suggested by de Ste. Croix (1954).
- 27 Tac. *Dial.* 7.2.
- 28 Parks (1945) 56.
- 29 Mart. 8.16.
- 30 E.g. Pliny, Tacitus, and Trachalus. Eprius Marcellus and Vibius Crispus, two advocates of the first century, both came from obscure origins, but amassed great fortunes and gained access to the imperial circle – though if we believe Tacitus, their involvement in delation played a substantial role. See Rutledge (2001) 225–228, 278–282.
- 31 Juv. 7.186–199.
- 32 Green (1998) xxiv.
- 33 Juv. 8.47–48.
- 34 Juv. 7.147.
- 35 *PIR*² L 19.
- 36 Sen. *Controv.* 10.pr.4.
- 37 Quint. *Inst.* 4.1.11. During the same case it appears Asinius also rebuked Labienus for using the phrase “*rebus agentibus*” (Quint. *Inst.* 9.3.13).
- 38 Tac. *Dial.* 38.2.
- 39 E.g. Vell. Pat. 1.16–18; Sen. *Controv.* 1.pr.6–10; Sen. *Ep.* 114.1–2; Plin. *NH.* 14.1.3–7; Plin. *Ep.* 2.14; Quint. *Inst.* 8.6.76; Tac. *Dial.* *passim*; Luce (1993) 13. Discussion of the decline of oratory appears in many modern works on Roman rhetoric: e.g. Kennedy (1972) 446–464, (1994) 186–192; Clarke (1996) 100–108.
- 40 Crook (1995) 27, 135, 176–177, 180–196.
- 41 Parks (1945) 31; Crook (1995) 180.
- 42 We know that some reforms in court procedure necessitated changes in advocates’ methods. The switch to arguing cases point by point (e.g. Suet. *Ner.* 15.1) and the reduction of time willingly assigned for a given case (e.g. Plin. *Ep.* 6.2.5) perhaps made it easier to argue cases, and may have encouraged advocates slightly less prepared or skilled. Pliny’s comment (*Ep.* 2.14.2–3) that advocates were rushing to the courts with no introduction may reflect this change. However, I believe the pervasiveness of “decline” in the literature can be more adequately explained by status.
- 43 For further discussion see Neuhauser (1958) *passim* and Crook (1995) 146–158.
- 44 Crook (1995) 122.
- 45 It had made a few isolated appearances in the republican period: Cic. *De Orat.* 1.49, *Orat.* 5. In the imperial period it first appears in the writings of Seneca the Younger: *Apoc.* 7.5.1, 12.2.2, 12.2.6, 12.3.31, *Dial.* 5.37.2.1.
- 46 Mart. 1.97.2, 2.64.1, 2.64.8, 4.8.2, 4.46.4, 5.16.14, 5.33.1, 2, 6.8.2, 9.68.6, 10.70.11, 11.24.8, 11.30.1, 12.68.3, 14.219.1; Juv. 1.32, 6.439, 7.106, 7.113, 7.136, 7.148, 10.121, 15.111; Tac. *Dial.* 1.1.5, 12.4.4; Suet. *Claud.* 15.3.10, *Vesp.* 13.1.1; Fronto *Ad. M. Caes.* 2.13, 2.18, *Ad Ant. Pium* 10. The absence of the term from the *Annales* is noteworthy.
- 47 Martyn (1996) 97.
- 48 Quint. *Inst.* 12.1.25.
- 49 Mart. 2.64.8
- 50 Mart. 5.16.14, 12.68.3.
- 51 For further discussion see Gleason (1995) *passim*.
- 52 Levick (1983) 114. See also Braund (1992) 81.
- 53 E.g. Clarke (1996) 100–108; Crook (1995) 176–80.
- 54 Plin. *Ep.* 6.11.3.
- 55 Sherwin-White (1966) 368.
- 56 Plin. *Ep.* 2.14.
- 57 Mart. 2.5; Sen. *Controv.* 3.pr.5; Mart. 7.51.

- 58 Pliny is not among them. As was explained in the Introduction, Pliny's participation in the courts warrants special extended examination and so he has been left to the side. It is surprising that Quintilian's own caseload cannot be more extensively reconstructed. Although we have his twelve-book work on oratory, we can identify only four of his cases: 4.1.19 (defended Queen Berenice in a case that appears also to have been heard by her), 6.1.39 (represented a man whose sister was part of the issue of the case; we know no more), 7.2.24 (defended Naevius of Arpinum, accused of murdering his wife), 9.2.73 (defended a woman accused of forging her husband's will – a case likely held in the centumviral court).
- 59 *PIR*² A 1241; Grellet-Dumazeau (1858) 417–418.
- 60 Sen. *Controv.* 7.4.7; Tac. *Dial.* 34.
- 61 Apparently he developed a reputation as a defence advocate (Hor. *Carm.* 2.1.13–14). Horace may, however, be trying to praise an existing or hopeful patron. If so, it is interesting that to cite someone's defence of individuals was flattering.
- 62 Sen. *Suas.* 6.15; Dio 53.29.1; *PIR*² A 199.
- 63 Sen. *Controv.* 2.5.13.
- 64 Plin. *NH.* 35.46.164; Quint. *Inst.* 10.1.22, 11.1.57; Suet. *Aug.* 56.3; Dio 55.4.3.
- 65 Quint. *Inst.* 6.1.21, 9.2.24.
- 66 Quint. *Inst.* 4.1.11, 7.2.5, 26, 9.3.13; Tac. *Dial.* 38.2.
- 67 Quint. *Inst.* 9.2.9, 34–35, 10.1.23.
- 68 *PIR*² D 126. Tacitus identifies Afer as a *delator*: Tac. *Ann.* 4.52.2, 4.52.7–8, 4.66.1. But see Quint. *Inst.* 6.3.81, 8.5.3, 9.4.31, 10.1.24, 10.1.118, 12.10.11, 12.11.3. See Rutledge's (2001) 220–223 prosopographical entry.
- 69 Tac. *Ann.* 4.52.1–2; Bauman (1992) 147–149.
- 70 Tac. *Ann.* 4.66.1.
- 71 Quint. *Inst.* 6.3.81.
- 72 Tac. *Ann.* 4.52.8.
- 73 Cloatilla: Quint. *Inst.* 8.5.16, 9.2.20, 9.3.66, 9.4.31; Laelia: Quint. *Inst.* 9.4.31.
- 74 Quint. *Inst.* 8.5.16, 9.2.20, 9.3.66, 9.4.31. For discussion of the trial see Marshall (1993).
- 75 Quint. *Inst.* 10.1.23. Volusenus Catulus: *PIR* V 647; *CIL* 6.1267, 31543, 31573, 31574.
- 76 A statement by the opposing counsel (Quint. *Inst.* 6.3.32) that Afer's client has the look of a slave suggests that Afer was the defendant's advocate. In another case (Quint. *Inst.* 6.3.54) we know that Manlius Sura was the opposing counsel but have neither the name of Afer's client nor the nature of the case.
- 77 Charis I p. 184B=145K.
- 78 Plin. *Ep.* 2.14.10.
- 79 *PIR*² C 1364. Whether the diversity of the cases we hear of is a result of the editing of the letters to deliberately feature a variety of cases is an intriguing question that unfortunately cannot be answered with confidence.
- 80 Van den Hout (1999) 278–279 believes Demostratus has been misidentified. For discussion of this case see Bowersock (1969) 93–100; Champlin (1980) 63–64; van den Hout (1999) 94–97, 278–279. Van den Hout suggests a date for the case of between 140 and 142.
- 81 Champlin (1980) 64 suggests that since the speech was published, it is likely that Fronto won the case. Van den Hout (1999) 96 believes Atticus was acquitted (i.e. Fronto lost the case), because he could not have held the consulship so close to the trial, had he been convicted. Atticus was consul in 143. The arguments for both positions are strong.
- 82 All of Fronto's following cases are discussed in Champlin (1980) 60–68.
- 83 Dio 69.18.1–4; SHA. *Hadr.* 9.3–5. Champlin (1980) 137–138 suggests a date in the 120s for this case.
- 84 Champlin (1980) 60.

- 85 Fronto *Ad. M. Caes.* 1.6.2–7; van den Hout (1999) 24–35.
- 86 The legal issue in dispute is difficult to determine, as is the exact context of Fronto's appearance before the emperor's court. For discussion see Champlin (1980) 61–62 and van den Hout (1999) 27–29. Marcus quotes a substantial fragment of Fronto's speech in his letter. Such a fragment of a forensic speech from the imperial period is rare.
- 87 Fronto *Ad. M. Caes.* 5.49, 5.50. For discussion see van den Hout (1999) 209–210.
- 88 Champlin (1980) 61.
- 89 Fronto may also have given a speech as advocate in which he made comments about the Christians, but the sources are weak and the facts very murky. For discussion, see Champlin (1980) 64–66.
- 90 Fronto *Ad. Am.* 1.15.1: “*in crimine mandatae caedis verteretur*”, “turned on a crime of a murder having been ordered”. See also Fronto *Ad. Am.* 1.14.2.
- 91 Following Champlin (1980) 67–68; Talbert (1984) App. 9 #35.
- 92 Fronto *Ad. Ant. Pium.* 8.1.
- 93 Surprisingly, van den Hout (1999) 395 says nothing about this.
- 94 Fulg. *Ex.* 35 p. 121H.
- 95 Champlin (1980) 67.
- 96 *Charis.* 175B; Champlin (1980) 66.
- 97 Hor. *Ars. P.* 369–373.
- 98 Juv. 7.108–110, 115–117. The Latin, *pro libertate*, suggests the issue was whether a person was free or still a slave, rather than whether a person was a Roman citizen or a foreigner.
- 99 Juv. 7. 143–147.
- 100 Quint. *Inst.* 4.2.117: “*In parvis ergo, quales sunt fere privatae, sit ille pressus et velut applicitus rei cultus ...*”, “In small cases, therefore, such as are the majority of private cases, the treatment must be restrained and closely connected to the subject...”; 11.1.44, 12.10.70; Crook (1995) 132.
- 101 Mart. 7.51.1–6, 11–12.
- 102 Quint. *Inst.* 6.4.6.
- 103 Eprius Marcellus: *PIR*² E 84; Cyperus: Mart. 8.16.
- 104 Mart. 3.38, 4.5.
- 105 Mart. 1.79.
- 106 Mart. 7.51.
- 107 Champlin (1980) 162 n. 62.
- 108 Tac. *Ann.* 2.37.1–3.
- 109 6.29.1. Pliny (*Ep.* 4.17.9) states that he took the case of Corellia because of his friendship with her father. Friendship may also explain Pliny's representation of Arrionilla (*Ep.* 1.5.5).
- 110 Quint. *Inst.* 4.1.7.
- 111 Tac. *Dial.* 5.5.
- 112 Ov. *Rem. Am.* 1. 150. See also Quint. *Inst.* 12.9.7; Stat. *Silv.* 4.5.49.
- 113 Plin. *Ep.* 6.18.2.
- 114 Hor. *Ars. P.* 419–425; Tac. *Dial.* 5.4.
- 115 Hoffer (1999) 11–12.
- 116 Quint. *Inst.* 12.7.12.
- 117 Plin. *Ep.* 3.4.7.
- 118 Aper, talking of his own career (Tac. *Dial.* 7.1), describes what types of days he would call “red-letter days”. Among these he includes the successful defending of an imperial freedman or agent in the emperor's court. One can easily see why this would have been a special day: imperial freedmen and agents were powerful people in Roman politics of this period, and to be able to put them in one's debt was of great value.

- 119 Plin. *Ep.* 2.9, 2.13, 3.2, 3.8, 4.4, 4.15, 6.8, 6.9, 6.32; Fronto *Ad. Am.* 1.1.2–4, *Ad. Am.* 1.4, *Ad. Am.* 2.4.1, *Ad. Am.* 2.6, *Ad. M. Caes.* 5.49, *Ad. Verum Imp.* 2.7.1–7. One cannot help but wonder if the numerous people we find Fronto asking (*Ad. Ant. Pium.* 8) to join him in Asia for his proconsulship either felt required to aid him because they had become previously indebted to him, or were the subjects of Fronto's efforts to create such future indebtedness.
- 120 Tac. *Dial.* 6.2.
- 121 Dio 55.4.2.
- 122 Quint. *Inst.* 12.7.5.
- 123 For a description of the creation and role of the office of the *iuridicus* see Simhäuser (1973) 235ff; Camodeca (1976); Eck (1979); Van den Hout (1999) 440–443. See also Peachin (1996) 56–60.
- 124 Fronto *Ad. Am.* 2.6, 2.7, 2.8.2.
- 125 Champlin (1980) 70.
- 126 Saller (1982) 119, 143; Brunt (1988) 418.
- 127 It is often difficult to clarify the relationship between an advocate and a client in the extant sources. Various scholars have examined this problem in both republican and Augustan periods: Neuhauser (1958); David (1992); Crook (1995).
- 128 Plin. *Ep.* 3.4.4: “*Legati rursus inducti iterum me iam praesentem advocatum postulaverunt, implorantes fidem meam quam essent contra Massam Baebium experti, adlegantes patrocini foedus*”, “The representatives were brought in again and asked me, now present, to serve as advocate, calling on my honor which they had experienced during the case against Baebius Massa, and pleading that they had a compact of patronage.”
- 129 Tac. *Dial.* 3.4.
- 130 CIL 14.2516 provides our closest match: “... *PROVINCIAE V HISPANIAE TRIVM ET MAURETANIAE DVAR ORATORI PRAESTANTISSIMO DEFENSORI CLIENTIVM FIDELISSIMO*”. Birley (1981) in his Appendix III says this inscription is “generally assigned” to C. Iulius Asper, *cos.* 212 (*PIR*² I 182); however, he provides no references. A study on this topic may be rewarding.
- 131 For more discussion see Crook (1995) 146–158.
- 132 Crook (1995) 148–149.
- 133 Ter. *Adelph.* 645–646, *Eunuch.* 763; Plaut. *Mil. Glor.* 663.
- 134 Grellet-Dumazeau (1858) 73–74.
- 135 E.g. Plin. *Ep.* 6.23.1–4; Saller (1982) 9.
- 136 Saller (1982) 11, 15; e.g. Fronto *Ad Verum Imp.* 2.7. In his recent study on friendship in the classical world, Konstan (1997) 136–137 suggests that “friendship” really was the vocabulary of patronage, in that friendship and patronage were not exclusive; there could be a true bond of affection, while acknowledging at the same time that one party was the superior. Gold (1987) 134 and Saller (1989) 57 have both shown that “*amicus*” was an ambiguous term used to encompass personal intimates as well as *patroni* and *clientes*.
- 137 Suet. *Aug.* 56.4; Dio 55.4.2; Macro. *Sat.* 1.4.27.
- 138 Emperors did not discourage this impression. See Campbell (1984) 17–69 for discussion (this passage of Dio is specifically mentioned on page 34).
- 139 Mart. 2.32.1–9.
- 140 Fronto *Ad. Am.* 2.11.2. For discussion of municipalities choosing patrons see Nicols (1980a) in ANRW 2.13.535–561.
- 141 Fronto *Ad M. Caes.* 5.59.
- 142 ILS 2929: “[M Pos]tunium Fest[um] | oratorem ...”
- 143 ILS 2928; Fronto *Ad. Ant. Pium.* 8.
- 144 Saller (1982) 10 points out that the word *patronus* appears widely in the epigraphical record. He suggests this is probably due to the fact that these inscriptions were usually set up by the clients, unlike the literary texts we have which were written by the patrons. See

- Saller (1982) Appendix 5 and Table III for a useful list of patrons of individuals from North Africa. Duncan-Jones (1972) had previously examined the patronage ties of the African town of Giufi to one Aurelius Dionysius. Towns: e.g. *ILS* 273, 884, 888, 5006, 6121 (Canusium), 6122 (Thamugadi), 9484. Provinces: *ILS* 2767, 6871.
- 145 *ILS* 6680; Millar (1977) 433; for a translation of a section of the inscription see Crook (1995) 49.
- 146 Tac. *Dial.* 7.2, 7.4.
- 147 Such fame extended beyond one's own hometown. An out-of-town guest accompanying L. Fadius Rufinus to dinner at Pliny's home identified Pliny upon being told of his work (Plin. *Ep.* 9.23.4).
- 148 Mart. 5.16.5–8.
- 149 *ILS* 6680.
- 150 Bean (1965) no. 127; Millar (1977) 435. The time frame is difficult to identify.
- 151 Millar (1977) 435.
- 152 The emperor's court was not always in Rome. Local communities might then be seeking representation in other cities as well as Rome for their cases.
- 153 Quint. *Inst.* 4.1.7.
- 154 SHA. *Hadr.* 20; Crook (1995) 52, 152.
- 155 Plin. *Pan.* 36.3.
- 156 Mart. 5.16.5.
- 157 Plin. *Ep.* 4.12.1–4.
- 158 Philostr. *VS.* 2.29.621. *PIR*² Q 55 suggests that he was active during the reign of Commodus or Severus perhaps.
- 159 Philostr. *VS.* 2.32.625.
- 160 Plin. *Ep.* 1.7.2.
- 161 Plin. *Ep.* 4.17.2–3.
- 162 Mart. 2.32.
- 163 Kelly (1966) 84 n. 1; Crook (1995) 131.
- 164 Tac. *Dial.* 7.1.
- 165 Millar (1977) 375–385, 434–446, 507–527 *passim*; Talbert (1984) 464–487 *passim*; Crook (1995) 48–50.
- 166 Cf., Millar (1977) 434.
- 167 *OGIS* 567 = *IG* 3.778: “... συνήγορον καὶ προήγορον τῆς πατρίδος διηνεκῇ ... πολλοὺς ὑπὲρ τῆς πατρίδος καὶ πόλεων πλείστων ἀγῶνας εἰρηκότα ἐπὶ τε τῶν Σεβαστῶν καὶ τῶν ἡγε[μόν]ων...”, “constant advocate and pleader for his native city ... having spoken many cases for his native city and many other cities before the emperors and the governors ...” For brief discussion see Crook (1995) 49–50.
- 168 *AE* 1971, 455: “... πρεσ[βεύ]-σαντα καὶ συνδικήσαντα ἐπὶ θεοὺς [Σε]-ουῆρον καὶ Ἀντωνίνον εἷς τε τὴν βασιλ[ίδα] Ῥώμην πλεονάκις ...”, “... delegate and advocate before the late emperors Severus and Antoninus at the palace in Rome several times. ...” Crook (1995) 50. Also *IGRR* 4.618.
- 169 This brings Scopelian to mind, who went on behalf of Smyrna and all Asia in general to speak against a resolution of Domitian that no vines be grown in Asia (Philostr. *VS.* 1.21.519–520).
- 170 Such advocates may appear in municipal inscriptions or papyri. C. Valerius Petronianus, of Mediolanum, may be one such man. He is described in funerary inscription (*ILS* 6732) as a *causidicus* who went on five delegations to Rome and elsewhere on behalf of his community before his death at the age of 23. We assume these cases involved municipal issues such as boundary disputes. Whether the cases were heard by the emperor cannot be ascertained.
- 171 Philostr. *VS.* 1.21.519–520.
- 172 Philostr. *VS.* 1.25.539.

- 173 Philostr. VS. 1.22.524.
- 174 Philostr. VS. 1.25.540.
- 175 This ability to deviate from fixed procedures and hear matters that straddled various jurisdictions or issues was also a feature of the senate. Consider the incident involving Norbanus Licinianus (Plin. *Ep.* 3.9.29–33).
- 176 Philostr. VS. 2.26.613.
- 177 Philostr. VS. 2.1.559–563.
- 178 Mart. 12.68.
- 179 As the emperor came to spend less and less time in the city of Rome over the course of the imperial period, changes were made. We have already discussed the creation and development of the jurisdictions of both the *praefectus urbi* and the *praefectus praetorio*; these likely took over some of the emperor's cases in Rome. In addition, the evolution of the provincial governors' legal jurisdiction (e.g. Suet. *Claud.* 23.1), the creation of the *iuridici*, posted in Italy, and the appointment of *iudices vice sacra* aided in managing and perhaps somewhat stemming the flow of cases to Rome. For discussion see Lintott (1993) 129–153; Peachin (1996) *passim*.

7 THE ADVOCATE'S ROLE OUTSIDE AND IN THE COURTROOM

- 1 Quint. *Inst.* 12.8.14.
- 2 Quint. *Inst.* 12.8.7–11.
- 3 Quint. *Inst.* 12.8.12–13.
- 4 Quint. *Inst.* 5.7.10–11.
- 5 Plin. *Ep.* 6.31.11, 6.33.3: “*ingens ... advocatio*”.
- 6 Quint. *Inst.* 10.1.23–24. The nature of the case is unknown. Domitius Afer's career has already been discussed. C. Sallustius Crispus Passienus (*PIR*² P 146) was closely connected to the imperial family; he married Domitia, the great-niece of Augustus, and, at Claudius' request, subsequently divorced her to marry Agrippina the Younger. He was *consul suffectus* in 27 and *consul ordinarius* in 44. D. Laelius Balbus (*PIR*² L 48; Rutledge [2001] 242–243) may be the same man mentioned by Tacitus (*Ann.* 6.47.1–3, 48.6) who prosecuted two women, Acutia and Albucilla, on separate occasions, before the senate and subsequently was stripped of his senatorial rank much to the satisfaction of all because of his willingness to use his eloquence against the innocent.
- 7 Quint. *Inst.* 9.2.34, 10.1.23. Asinius Pollio's career has already been discussed. M. Valerius Messalla Corvinus (*PIR* V 90) *cos.* 31 BC, excelled as a soldier, orator, politician, and patron of letters. Augustus appointed him as *praefectus urbi* in 26–25 BC; he resigned a few days later (Tac. *Ann.* 6.11.4). In 2 BC it was Messalla who conferred the title of *pater patriae* upon Augustus in the senate. For his forensic involvement see: Quint. *Inst.* 10.1.22, 23, 113, 12.11.28.
- 8 Quint. *Inst.* 1.5.43, 5.13.49, 6.3.78, 6.4.6; Plin. *Ep.* 2.19.2, 5.9.1, 6.33.3; Suet. *De Rhet.* 1; Fronto *Ad. M. Caes.* 3.4.1; Gell. *NA.* 14.2.7.
- 9 Tac. *Dial.* 14.1.
- 10 Quint. *Inst.* 10.7.30.
- 11 Sen. *Controv.* 3.pr.6.
- 12 Plin. *Ep.* 6.2.1.
- 13 Quint. *Inst.* 4.1.54.
- 14 Sen. *Controv.* 2.5.20.
- 15 Quint. *Inst.* 10.7.30.
- 16 Quint. *Inst.* 10.7.31.
- 17 Tac. *Dial.* 19.5, 38.1. Pliny (*Ep.* 6.2.5) mentions advocates applying for and receiving one or two waterclock's worth of time to speak.
- 18 Quint. *Inst.* 4.1.72.

- 19 Suet. *Ner.* 15.1: “*Cognoscendi morem eum tenuit, ut continuis actionibus omissis singillatim quaeque per vices ageret.*” “He held to that custom of speaking, that continuous speeches be omitted, [and rather] each one [speak] singly, alternately.”
- 20 Plin. *Ep.* 6.22.2: “*Egit uterque pro se, egit autem carptim et κατὰ κεφάλαιον, quo genere veritas statim ostenditur.*” “Each spoke on his own behalf; however, each spoke in pieces, and according to the headings, by which the truth immediately is revealed.”
- 21 E.g. Tac. *Ann.* 13.51; Suet. *Vesp.* 10.1; Gell. *NA.* 14.2; Dio 60.29.4.
- 22 Plin. *Ep.* 2.11.14, 4.9.9. This ratio dates from the *Lex Pompeia de ambitu* of 52 BC (Rotondi [1962] 410–411).
- 23 Plin. *Ep.* 4.16.2, 6.2.7–8. Pliny (*Ep.* 6.2.3) says one of the joys of working with Regulus was that he always asked for unlimited time to speak. Pliny determines the length of “*horis septem*” (seven hours) from the water clocks commonly used as the time measures of speeches. How much time, by modern standards, was in one water clock is estimated at between 15 and 20 minutes. Since we cannot date this speech to a specific day of the year, the conversion of these 7 hours (which varied widely according to the season) to modern time length is not exact. Based on the hours of sunlight and sunset, the length of a Roman hour during the day would vary from approximately 44 minutes in the winter to 1 hour and 15 minutes in the summer. See Carcopino (1940) 149 and Talbert (1984) 500–503. Time and speech lengths will be discussed further below.
- 24 Mart. 6.35.1–6.
- 25 Mart. 8.7.
- 26 Marcus Aurelius does not appear to have rushed cases in his court. Dio (71.6.1) tells us that he “*πολλάκις*” (often) would be trying the same case for eleven or twelve days. Dio’s very mention of this detail suggests its uniqueness.
- 27 Plin. *Ep.* 4.16.2, 6.2.5. See also Mart. 6.35; 8.7; Tac. *Dial.* 38.1; Plin. *Ep.* 1.23.2, 6.2.3–7, 11.3.52 (“*aquam perdit*”).
- 28 Quint. *Inst.* 12.9.19.
- 29 Quint. *Inst.* 6.3.46, 10.7.3.
- 30 Quint. *Inst.* 11.3.19.
- 31 Quint. *Inst.* 11.3.22.
- 32 Plin. *Ep.* 9.36.3–5.
- 33 Plin. *Ep.* 9.40.
- 34 Gell. *NA.* 11.3.1.
- 35 Quint. *Inst.* 12.8.2.
- 36 Sen. *Controv.* 10.pr.2.
- 37 Quint. *Inst.* 12.8.2.
- 38 Crook (1995) 133. For discussion of the legal issues related to postponements see Metzger (1997) and (2005).
- 39 Gell. *NA.* 12.13.1.
- 40 E.g. the trial of Caesius Cordus: Tac. *Ann.* 3.38.1 and 3.70.1; Suillius Rufus: Tac. *Ann.* 13.43.2.
- 41 Quint. *Inst.* 12.9.16.
- 42 Quint. *Inst.* 5.13.3.
- 43 Quint. *Inst.* 10.7.2.
- 44 Quint. *Inst.* 10.7.2, 10.7.20, 10.3.30, 10.7.2.
- 45 Dio 69.18.3.
- 46 Mart. 7.51.
- 47 Quint. *Inst.* 10.7.20.
- 48 Quint. *Inst.* 10.7.22.
- 49 Talbert (1984) 209–210.
- 50 Suet. *Aug.* 32.3, *Claud.* 23.1.
- 51 Suet. *Claud.* 23.1.

- 52 Suet. *Galba*. 14.3.
 53 Martial (7.28.7) mentions mid-December as a time when an advocate has leisure time.
 54 Greenidge (1901) 135–141; Buckland (1963) 615–616. Multiple variables and obscure evidence make study of this topic very difficult.
 55 Suet. *Aug.* 32.2; Dio 60.17.1.
 56 SHA. *M. Ant.* 10.
 57 Gai. *Inst.* 2.279; *Dig.* 2.12.2.
 58 Suet. *Claud.* 14.
 59 Dio 76.17.1.
 60 *Dig.* 2.12.6.
 61 Dio 55.26.1.
 62 *Fasti Ostienses*; Dio 59.7.5.
 63 E.g. Tac. *Ann.* 1.16.2, 50.1; Suet. *Tib.* 53.2, *Cal.* 24.2. The cancellation due to famine, death of imperial family member, and Gaius' desire that people attend the theater are likely linked to the Roman practice of *iustitium*, an institution that temporarily suspended all public and private business.
 64 Plin. *NH.* 7.14.62; Tac. *Ann.* 13.30.4; AE 1972, 174 = *EJ* 367; *CIL* 6. 31293, 10.3903. These inscriptions, however, complicate matters in that *iustitium* is not mentioned; rather, we find the term *vadimonia* and some form of the verb *differre*. This language is not isolated to this event. In an unrelated passage Juvenal (3.213) speaks of "*differt vadimonia praetor*".
 65 Plin. *Ep.* 8.21.2–3.
 66 Sen. *Apoc.* 7.4.
 67 Juv. 2.70–71.
 68 Plin. *Ep.* 9.40.2. It is a pity that Pliny does not define "the winter" more specifically.
 69 A new more streamlined procedure for *repetundae* cases was introduced by a *senatus consultum* of 4 BC (*FIRA* 1 no. 68 V), which could find the judgment rendered within a few months of the charges being laid. It appears this procedure was modified shortly thereafter. However, general comments made by Pliny suggest some sort of shortened procedure still existed in his day. For further discussion of this topic see Brunt (1961); Talbert (1984) 464–466.
 70 Quint. *Inst.* 5.6.6; Crook (1995) 133.
 71 Juv. 13.154–161.
 72 Tac. *Ann.* 14.41.2; Plin. *Ep.* 6.11.1.
 73 Plin. *Ep.* 6.11.
 74 Plin. *Ep.* 6.31.1–12.
 75 Dio 71.6.1.
 76 Plin. *Ep.* 5.9.1. The phrase Pliny uses is "*proxima comperendinatione*", "at the next meeting after an adjournment until the day after the next". For discussion, see Sherwin-White (1966) 336.
 77 The trial of Marius Priscus, not including preparation, filled three nine-hour to ten-hour days at the very minimum (Day One: Plin. *Ep.* 2.11.14–16; Day Two: Plin. *Ep.* 2.11.17–18; Day Three: Plin. *Ep.* 2.11.19–22). The fallout concerning Firminus was dealt with at the next regular meeting of the senate (Plin. *Ep.* 2.12). The trials of Caecilius Classicus and his associates, as well as that of Bassus, both filled multiple days over several weeks (Classicus: Plin. *Ep.* 3.9.20–21; Julius Bassus: Plin. *Ep.* 4.9). For the length of the court days see Talbert (1984) 500–503. Another somewhat exceptional case was that of Calpurnius Piso. According to Tacitus' report (*Ann.* 3.13.1), the trial consisted of two days for the prosecution and, after a six-day interval, three days for the defence. See Talbert (1984) 484, (1999); Woodman and Martin (1996) 152–153.
 78 E.g. Quint. *Inst.* 1.5.43, 4.2.28, 5.13.49, 6.3.78, 6.4.6; Tac. *Dial.* 38.1; Plin. *Ep.* 2.19.2, 5.9.1, 6.33.2–4; Suet. *De Rhet.* 6; Fronto *Ad. M. Caes.* 3.4.1–2; Gell. *NA.* 14.2.7.

- 79 Suet. *De Rhet.* 30.3.
- 80 Quint. *Inst.* 4.2.86.
- 81 Quint. *Inst.* 6.4.6.
- 82 Plin. *Ep.* 5.9.1–2.
- 83 Lampo, secretary to Flaccus the prefect of Alexandria and Egypt, was tried for impiety towards Tiberius, and broke down under the strain of his trial, which Philo (*In Flacco*. 16.128) tells us dragged on for two years. It is dangerous to compare provincial legal activities with those in Rome. However, we have limited resources. We must also remember the legal restrictions placed on trials. Gaius (4.104–5) tells us that the *leges Iuliae iudicariae* stipulated that *iudicia legitima* (following the *litis contestatio*) lapsed after eighteen months, and *iudicia quae imperio continentur* at the point when the magistrate who authorized the actions left office. Kelly (1966) 118–131 believes expiration could not have been so simple.
- 84 Fronto *Ad. M. Caes.* 1.6.2–5. Marcus Aurelius quotes part of the speech, which he apparently has in front of him, back to Fronto in this letter.
- 85 Juv. 16.43–47.
- 86 Sen. *Brev.* 7.6.
- 87 Mart. 7.65. We cannot tell if he was the litigant or the advocate. In light of the rules concerning the lapsing of charges we perhaps must interpret Gargilianus' determination to mean that he continued, year after year, to attempt to have an issue taken up by the courts but was repeatedly turned down by the magistrates. The less likely alternative is that for some reason the same case was extended, by means of postponements and adjournments, over a twenty-year period.
- 88 Since the Roman hour lengthened and diminished depending on the hours of daylight for any given day, Camodeca (1992) 51 n. 45 correctly calculates that the beginning of the third hour would commence at approximately 8:30am in mid-summer, and 10:00am in January.
- 89 Third: *TPSulp* 14, 27, *TH* 15; fourth: *TPSulp* 15; fifth: *TPSulp* 13, *TH* 6.
- 90 It is noteworthy that among the *vadimonia* to be executed locally, ten of the thirteen chose the third hour: *TPSulp* 1, 2, 3, 4, 5, 8, 9, 16, 17, 20. Of the others, one was set for the first hour (*TPSulp* 12), one for the second hour (*TPSulp* 18), and one for the ninth (*TPSulp* 10). See Camodeca (1992) 51–52; Cloud (2002) 235–236.
- 91 Mart. 4.8.1–4.
- 92 Hor. *Sat.* 1.9.35–37.
- 93 Mart. 8.67.3.
- 94 *TH* 13, *TH* 14.
- 95 Talbert (1984) 189–191.
- 96 Mart. 10.70.8–9, 7.51.11.
- 97 Hor. *Ep.* 1.7.46–51.
- 98 Juv. 13.158.
- 99 Talbert (1984) 502–503.
- 100 Dio 69.18.3.
- 101 Mart. 7.51.11.
- 102 *TPSulp* 19. See Camodeca (1992) 84–96, (1999) 49, 72. One local *vadimonium* (*TPSulp* 10) chooses this hour as well.
- 103 Dio 76.17.1.
- 104 Fronto *Ad M. Caes.* 2.18.1, *De Feriis* 3.7.
- 105 E.g. Mart. 9.68, 12.57.1–6.
- 106 Mart. 10.70.5–6.
- 107 Mart. 1.49.31; Tac. *Dial.* 13.5.
- 108 Plin. *Ep.* 8.21.2.
- 109 Plin. *Ep.* 9.40.2.
- 110 Mart. 10.20.

- 111 Quint. *Inst.* 12.7.10.
- 112 Mart. 2.5.
- 113 Mart. 10.20.14–15.
- 114 Quint. *Inst.* 11.3.22; Gell. *NA.* 11.3.1.
- 115 Quint. *Inst.* 10.7.30.
- 116 Sen. *Controv.* 3.pr.5.
- 117 Quint. *Inst.* 11.3.22.
- 118 Tac. *Dial.* 19.1, 26.4.
- 119 For further discussion see Aldrete (1999) 44–84.
- 120 Winterbottom (1964).
- 121 Dominik (1997) 50.
- 122 Quint. *Inst.* 2.11.4, 2.11.6; Winterbottom (1964) 94–95.
- 123 E.g. Quint. *Inst.* 1.11.3, 12.9.1–5; Clarke (1996) 85–99, 104–105; Kennedy (1994) 173–178. Kennedy (1994) 173 terms this new style the “declamatory style”.
- 124 Quint. *Inst.* 1.pr.26
- 125 Quint. *Inst.* 1.pr.27.
- 126 Quint. *Inst.* 11.3.11–12, 12.5.5.
- 127 Quint. *Inst.* 12.5.5.
- 128 Quint. *Inst.* 12.5.5.
- 129 Quint. *Inst.* 1.pr.12, 2.13.2, 6.3.30, 10.7.1, 12.5.1.
- 130 Quint. *Inst.* 1.10.36, 10.1.5, 12.3.1.
- 131 Quint. *Inst.* 1.pr.36, 11.2.3, 11.3.11–12.
- 132 E.g. Quint. *Inst.* 1.11.1–4, 12.5.5. Quintilian is certainly not the only author to attempt to separate these two groups despite their obvious similarities in the use of expression, gesture, and movement (e.g. Sen. *Controv.* 3.pr.2).
- 133 Quint. *Inst.* 11.3.43.
- 134 Quint. *Inst.* 11.3.45.
- 135 Quint. *Inst.* 1.11.12.
- 136 Quint. *Inst.* 11.3.11, 11.3.52.
- 137 Quint. *Inst.* 11.3.52.
- 138 Quint. *Inst.* 11.3.23, 11.3.40. E.g. Mart. 6.19; Juv. 2.51.
- 139 Gell. *NA.* 11.7.3.
- 140 Quint. *Inst.* 6.3.81.
- 141 Sen. *Controv.* 9.pr.3; Quint. *Inst.* 6.4.11; Tac. *Dial.* 34.1.
- 142 Quint. *Inst.* 6.4.9.
- 143 Quint. *Inst.* 12.5.6.
- 144 Plin. *Ep.* 2.14.10–11.
- 145 Quint. *Inst.* 12.5.5–6.
- 146 Plin. *Ep.* 2.19.4.
- 147 Fronto *Ad. M. Caes.* 3.6.
- 148 Quint. *Inst.* 1.11.10, 11.3.76.
- 149 Quint. *Inst.* 11.3.75.
- 150 Quint. *Inst.* 9.3.101.
- 151 Quint. *Inst.* 11.3.70.
- 152 Mime and Pantomime, two artistic genres that became very popular during the imperial period, no doubt had some influence on the courtroom, even if advocates worked hard to separate themselves from actors. See Brilliant (1963) 10; Aldrete (1999) 52–54. For a more general discussion see Beacham (1992) 117–153.
- 153 Aldrete (1999) 72 notes the increased level of specificity and the broadening of range found in the gestures discussed in Quintilian’s work compared to those found in Cicero’s writings.
- 154 Quint. *Inst.* 11.3.79.

- 155 Quint. *Inst.* 11.3.69.
- 156 Quint. *Inst.* 11.3.71.
- 157 Quint. *Inst.* 11.3.85.
- 158 Quint. *Inst.* 11.3.107–108.
- 159 Quint. *Inst.* 11.3.109.
- 160 Quint. *Inst.* 11.3.112, 11.3.130.
- 161 Maier-Eichhorn (1989); Aldrete (1999) 3–43. Aldrete's study considers the practical elements of gesture primarily through Cicero's works; it uses imperial sources, specifically Quintilian, to examine the theoretical study of oratory in the latter's time. Imperial examples of practical gesture in the courts are somewhat lacking in Aldrete's study.
- 162 Quint. *Inst.* 11.3.92.
- 163 Quint. *Inst.* 11.3.84.
- 164 Quint. *Inst.* 4.2.39, 11.3.118, 11.3.121, 11.3.125. Quintilian does not elaborate on whether each movement had a particular significance.
- 165 Quint. *Inst.* 11.3.111, 11.3.161–170.
- 166 Aldrete (1999) 81–83.
- 167 Corbeill (2000).
- 168 Quint. *Inst.* 11.3.2.
- 169 Graf (1992) 41.
- 170 Quint. *Inst.* 10.1.16.
- 171 Plin. *Ep.* 2.19; Quint. *Inst.* 11.3.125–126.
- 172 Quint. *Inst.* 6.3.54, 11.3.144, 11.3.149.
- 173 Sen. *Controv.* 9.4.18; Quint. *Inst.* 6.1.48.
- 174 Quint. *Inst.* 11.3.131, 11.3.132.
- 175 Mart. 6.35; Quint. *Inst.* 11.3.136.
- 176 Quint. *Inst.* 6.2.26–28, 6.2.34, 11.3.62, 12.5.4.
- 177 Mart. 8.17.
- 178 Quint. *Inst.* 6.2.36.
- 179 Quint. *Inst.* 4.1.28.
- 180 Sen. *Controv.* 7.4.6.
- 181 Quint. *Inst.* 12.10.47.
- 182 Quint. *Inst.* 11.3.138–139, 11.3.141, 12.10.47. Based on the *Acta Isidori*, rec. B, col. ii, l. 37, it seems that advocates from the provinces could appear before the courts in their native dress. The *Acta* are, however, known to share many features with the Greek novel and thus it is extremely difficult to determine their historical accuracy. See Musurillo (1954) Appendix III.
- 183 Quint. *Inst.* 11.3.137.
- 184 Juv. 2.65–74.
- 185 Quint. *Inst.* 11.3.142.
- 186 Mart. 10.87.13–15; Juv. 7.143–145.
- 187 Plin. *Ep.* 6.2.2: "*oculum modo dextrum modo sinistrum circumlinebat (dextrum si a petitore, alterum si a possessore esset acturus)*". Sherwin-White (1966) 357 admits we know nothing about this practice.
- 188 Mart. 2.29.2, 8.33.22.
- 189 Plin. *Ep.* 6.2.2.
- 190 It is interesting that Aper (Tac. *Dial.* 8.3) includes in his description of Eprius Marcellus and Vibius Crispus (two supposed *delatores*) comments concerning their low birth, their low moral character, and the fact that one of them "*habitu quoque corporis contemptus*", "was disdained of because of his physical attributes".
- 191 Quint. *Inst.* 11.3.145–7.
- 192 Quint. *Inst.* 5.13.39.

- 193 Quint. *Inst.* 12.10.70. I have already mentioned that an advocate's speaking was affected by whether he was serving as defence or prosecution.
- 194 Quint. *Inst.* 11.3.153.
- 195 Quint. *Inst.* 11.1.43, 11.3.150.
- 196 Quint. *Inst.* 8.3.14, 11.1.43–45.
- 197 Quint. *Inst.* 6.1.9.
- 198 Quint. *Inst.* 5.10.115.
- 199 Quint. *Inst.* 5.13.4–6, 7.4.18.
- 200 Quint. *Inst.* 11.3.134.
- 201 Quint. *Inst.* 11.3.134.
- 202 Quint. *Inst.* 11.3.130.
- 203 Quint. *Inst.* 4.1.28, 6.1.31, 6.1.33, 6.1.41; Juv. 7.145–146.
- 204 Quint. *Inst.* 6.1.32.
- 205 Quint. *Inst.* 6.3.72.
- 206 Quint. *Inst.* 6.1.40.
- 207 Quint. *Inst.* 3.8.7, 6.2.2, 6.2.4.
- 208 Quintilian (*Inst.* 11.3.144, 145, 147) and Juvenal (7.111–114, 117–118) describe the progressive physical strain over the course of a speech.
- 209 Plin. *Ep.* 6.2.2. Juvenal (7.115) describes another pale advocate.
- 210 Plin. *Ep.* 1.18.1–6. Unfortunately, Pliny does not provide the contents of Suetonius' dream.
- 211 Quint. *Inst.* 11.3.158.
- 212 Fronto *Ad Am.* 1.27.1–2.
- 213 Tac. *Dial.* 5.4.
- 214 Sen. *Controv.* 4.pr.10.
- 215 Tac. *Dial.* 7.4.
- 216 E.g. Plin. *Ep.* 2.11, 4.9, 5.20.
- 217 Quint. *Inst.* 10.1.16.
- 218 Quint. *Inst.* 12.5.4.
- 219 Tac. *Dial.* 13.5.
- 220 Sen. *Controv.* 9.4.18. How the friend going around the court with a gloomy face helped the advocate is unclear. Pliny (*Ep.* 4.11.1) tells us of Valerius Licinianus, a former leading advocate of Rome, who, having suffered exile, was teaching rhetoric in Sicily.
- 221 Hor. *Sat.* 2.5.27–44.
- 222 Quint. *Inst.* 4.1.7.
- 223 Tac. *Dial.* 6.2.
- 224 Sen. *Controv.* 3.pr.3.
- 225 Graf (1992) 40 suggests that this same type of link was thought to exist between the outward appearance of a man (as reflected in dress, gesture, walk, and other motions) and the inward personality and character. Gleason's book (1995) focuses specifically on this topic.
- 226 E.g. Quint. *Inst.* 5.12.20: "*Quapropter eloquentiam, licet hanc (ut sentio enim, dicam) libidinosa resupina voluptate auditoria probent, nullam esse existimabo ...*", "Therefore, although the audiences approve of this (I will say what I truly think) debauched eloquence with its fanciful charm, I will not consider it eloquence at all ..." See also Quint. *Inst.* 10.1.43, 12.10.73; Tac. *Dial.* 20.3; Aldrete (1999) 169.
- 227 E.g. Quint. *Inst.* 4.2.39, 11.3.57.
- 228 E.g. Quint. *Inst.* 1.11.3, 2.10.11, 4.1.9, 4.2.126, 12.9.5.
- 229 E.g. Quint. *Inst.* 1.11.3, 2.10.11, 4.2.126, 4.3.1, 12.9.1.
- 230 E.g. Quint. *Inst.* 2.12.6, 4.2.122, 10.1.43.
- 231 E.g. Quint. *Inst.* 4.2.126.
- 232 Quint. *Inst.* 4.3.1–2.
- 233 Tac. *Dial.* 19.5; 20.1–4; Plin. *Ep.* 6.22.2; Gell. *NA.* 14.2.9.

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- 234 Sherwin-White (1966) 368; Clarke (1996) 100; Fantham (1997) 122.
235 Parks (1945) 31; Crook (1995) 27, 180–192.
236 Fronto *Ad. Am.* 1.27.2.
237 A task Tacitus undertakes with gusto.
238 Sen. *Controv.* 3.*pr.*14; Quint. *Inst.* 2.12.6, 5.12.20, 6.4.5, 10.1.43, 12.10.49.

CONCLUSIONS

- 1 Juv. *Sat.* 13.157–161.

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